

**CITY OF BETHLEHEM  
TAX BUREAU**

**RULES AND REGULATIONS FOR  
TAX ON EARNED INCOME/COMPENSATION AND NET PROFITS**

**AMENDED LOCAL TAX ENABLING ACT  
BASED ON ACT 166 OF 2002  
FOR 2003 AND SUBSEQUENT TAX YEARS**

**NOTICE**

All taxpayers are subject to these Rules and Regulations and to the Earned Income/Compensation Tax Resolutions/Ordinances of the City of Bethlehem, levying a tax on earned income/compensation and net profits and requiring resident employers to withhold the tax from their employees.

The Tax Resolutions/Ordinances and the Rules and Regulations are continuing ones, applicable until changed by the City of Bethlehem.

All residents and employers, and non-residents where applicable, in the municipalities and school districts where the City of Bethlehem Tax Bureau is the appointed or commissioned collector, are subject to these Rules and Regulations and to the applicable Earned Income/Compensation and Net Profits Tax Ordinances and Resolutions of the respective municipalities and school districts levying a tax on earned income/compensation and net profits.

Copies of the Tax Resolutions/Ordinances may be examined at City Hall, Room 301, 10 East Church Street, Bethlehem, Pennsylvania 18018.

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## **ARTICLE I GENERAL PROVISIONS**

### **Section 101. Definitions.**

The following words and phrases used in the Tax Ordinances and Resolutions and in these Rules and Regulations have the following meanings unless the context clearly indicates a different meaning:

“Assessment” – The determination by a local taxing authority of the amount of underpayment by a taxpayer.

“Association” – A partnership, limited partnership, or any other unincorporated group of two or more persons. - \*

“Business” – An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association, or any other entity. - \*

“Compensation” – See “Earned Income.”

“Coterminous Taxing District” – A political subdivision, including a school district, which have appointed or commissioned the City of Bethlehem Tax Bureau to administer and enforce its ordinances and resolutions enacting a tax on earned income/compensation and net profits.

“Corporation” – A corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.  
- \*

“Covenant Not To Compete” – A type of non-activity. When one party promises to compensate another party to refrain from working in a certain business or profession, within a limited geographic region, for a certain period of time. A “Covenant Not To Compete” is not comparable to income from the sale of goodwill, nor can it be considered investment income, for the payments are directly dependent upon the conduct of the person receiving the payments.

“Current Year” – The calendar year for which the tax is being levied. - \*

“Domicile” – The place where one lives and has his or her permanent home and to which he or she has the intention of returning whenever he or she is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him or her to adopt some other permanent home. In the case of businesses, or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged. - \*

“Earned Income” – “Compensation” as determined under section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971,” and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax) NOT INCLUDING, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the “Tax Reform Code of 1971.” Any housing allowance provided to a member of the clergy shall not be taxable as earned income. See SECTION 601 in the Appendix for

referenced act and regulations. - \*

“Employee” – A person employed by an "employer" on a salary, wage, commission or other compensation basis. Any person who renders services to another for financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter and shall include temporary, provisional, casual, or part-time employment.

“Employer” – A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission, or other compensation. - \*

“General Partner” – One or more persons who associate to carry on a business as co-owners for profit and who are personally liable for all the debts of the partnership.

“Inactivity” – Defined as doing “nothing.”

“Income Tax Officer or Officer” – Person, public employee, or private agency designated by the governing body to collect and administer the tax on earned income/compensation and net profits. - \*

“Independent Contractor” – A person who, while performing services for another person, is not subject to the direction and control of another person, as to the result to be accomplished by the work and as to the details and means by which that result is accomplished, such as authors, seamstresses, laundresses, tailors, and registered or practical nurses. Where the independent contractor is in the permanent or part-time employment of an employer, however, that contractor will be considered an employee of said employer for the purpose of withholding the tax due under the Ordinances and Resolutions.

“IRC” – The Internal Revenue Code, as amended from time to time.

“Limited Liability Company” or “Company” – An association that is a limited liability company organized and existing under Pa. Act 106 of 1994, known as the Limited Liability Company Act, or organized and existing under a similar Act of another state or commonwealth.

“Limited Partnership” – A type of partnership comprised of one or more General Partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who take no part in running the business and who incur no liability for partnership obligations beyond the contribution they invested in the partnership.

“Local Taxing Authority” – A political subdivision levying an eligible tax. The term shall include any officer, agent, agency, clerk, income tax officer, employee or other person to whom the governing body has assigned responsibility for the audit, assessment, determination or administration of an eligible tax. The term shall not include a tax collector or collection agency who has no authority to audit a taxpayer or determine the amount of eligible tax or whose only responsibility is to collect an eligible tax on behalf of the governing body.

“Net Profits” – The net income from the operation of a business, profession, or other activity, (except from Corporations), determined under section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971,” and regulations in 61 Pa. Code Pt. 1 Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming the term shall not include:

- (1) any interest generated from monetary accounts or investment instruments of the farming business;
- (2) any gain on the sale of farming machinery;
- (3) any gain on the sale of livestock held twelve months or more for draft, breeding or dairy purposes; and
- (4) any gain on the sale of other capital assets of the farm.

See SECTION 602 in the Appendix for referenced act and regulations. - \*

“Net Losses” – The amount in which the aggregate total business expenses exceed the aggregate total business income.

“Non-activity” – Deliberately refraining from doing something. It is the positive absence of activity – as affirmative restraint. Each day throughout a certain time period, the taxpayer is under a duty to refrain from working in that profession or business. Performance under a “covenant not to compete” is deliberate and purposeful non-activity, and while inactivity is generally weak and dissipating, non-activity can be just as powerful as activity.

#### EXAMPLE

A “covenant not to compete” is so important in our society that courts may even enforce them by issuing injunctions – a rare civil remedy – in addition to awarding monetary damages.

“Nonresident” – A person, partnership, association or other entity domiciled outside the taxing district. - \*

“Office” or “City of Bethlehem Tax Bureau” or “Tax Bureau” or “Bureau” – an office established by the City of Bethlehem, to collect and receive earned income/compensation and net profit taxes and administer earned income/compensation and net profit tax ordinances or resolutions of City of Bethlehem, and any political subdivisions, including school districts, with which it may enter into collection agreements. The Office performs the function of the "Income Tax Officer".

“Ordinance” – As adopted by the taxing district levying and or "Ordinance" assessing an Earned Income/Compensation and net profits tax.

“Overpayment” – Any payment of tax which is determined in the manner provided by law not to be due.

“Partnership Income” – The taxable income in respect to a partnership is taxable to its partners whether or not it is distributed. The character of any item includable in each partner’s share is determined as if the item was realized directly by the individual partners from the source from which it was realized by the partnership or incurred as in the same manner as the partnership.

“Passive Activity of a Partner” – Is an activity in which the partner does not materially participate in the management of the entity by having influence or effect on decisions or actions, or through physical presence or activity.

“Person” or “Individual” – A natural person. - \*

“Preceding Year” – The calendar year before the current year. - \*

“Realized Income” – Defined as investment income, not earned income/compensation.

“Resident” – A person, partnership, association, or other entity domiciled in the taxing district. - \*

“Resolution” – As adopted by the taxing district levying and or "Ordinance" assessing an earned income/compensation and net profits tax.

“S Corporation” – A corporation that is eligible to choose S Corporation status and whose shareholders have all consented to the corporation’s choice of S Corporation status as per Federal Law.

“Succeeding Year” – The calendar year following the current year. - \*

“**TAX**” – The Earned Income/Compensation and/or net profits tax enacted under ACT 511, P.L. 1257 as amended and known as “The Local Tax Enabling ACT 166 of 2002.” “Tax” includes interest, penalties and additions to “tax” such as costs of collection, and further includes the tax required to be withheld by an employer on the earned income/compensation paid to employees.

“Taxing District” or “District” or “Taxing Jurisdiction” – The political subdivisions, including school districts, levying and assessing an earned income/compensation and net profits tax.

“Taxpayer” – A person, partnership, association, or any other entity, required hereunder to file a return of earned income/compensation or net profits, or to pay a tax thereon. - \*

“Total Income” – The sum of “Earned Income/Compensation” plus “Net Profits.”

“Underpayment” – The amount or portion of any tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

“Voluntary payment” – The payment of an eligible tax made pursuant to the free will of the taxpayer. The term does not include a payment as a result of distraint or levy or pursuant to a legal proceeding in which the local taxing authority is seeking to collect its delinquent taxes or file a claim therefor.

[\* - NOTE: Pursuant to Section 13 of the Act of December 31, 1965, P.L. 1257, Act 511, "The Local Tax Enabling Act" (herein "Act 511"), 53 P.S. 6913, as amended, definitions contained therein "shall be exclusive for any tax upon earned income and net profits levied and assessed pursuant to this act, and shall not be altered or changed by any political subdivision levying and assessing such tax." Definitions contained herein and marked "\*" are those set forth in Act 511 as of the date of the adoption of these Rules and Regulations. Amendments to Act 511 revising definitions shall supersede those contained herein. Revised and additional definitions have been included from amendments to the LTEA, such as ACT 50 of 1999, ACT 24 of 2000 and ACT 166 of 2002. Additional definitions have been included for clarification purposes.]

## **ARTICLE II IMPOSITION OF TAX**

### **Section 201. Persons Subject To Tax.**

All persons who are:

- (a) residents of City of Bethlehem and Coterminous Taxing Districts, who are employed or engaged in the operation of a business, profession, or other activity for income or profit;
- (b) non-residents of City of Bethlehem and Coterminous Taxing Districts, who are employed in City of Bethlehem or Coterminous Taxing Districts, or engaged in the operation of a business, profession, or other activity for income or profit in City of Bethlehem or Coterminous Taxing Districts, are subject to this tax.

A "resident" is an individual who is domiciled in City of Bethlehem or a Coterminous Taxing District, as evidenced, among other things, by one or more of the following:

- a. By customarily being physically present, sleeping, and eating there.
- b. By holding him or herself out as residing there, i.e. giving address in registration for licenses, voting, and payment of personal or property taxes.
- c. By his or her spouse and minor children living there.
- d. By maintaining religious, civic, and club affiliations there.
- e. By the center of his or her affairs appearing to be there.

Normally it is not difficult to determine the domicile of a person because most of the determining factors point to one conclusion. Obviously, if a person has all of the foregoing factors occurring in one district, he or she is a resident of that district. Of more difficulty is the situation concerning persons for whom some of the factors occur in one district and others take place elsewhere. In such cases the residence or domicile of an individual shall be determined by the Officer based on all of the legally relevant factors which affect the issue. Each case shall be determined solely on its own facts.

### **Section 202. What Is Taxed.**

A. The tax is imposed on earned income/compensation and net profits as both are defined in Article I of these Rules and Regulations. These items are subject to the tax whether a taxpayer received them directly or through an agent. Where the taxpayer has received remuneration, a portion of which is attributable to services rendered ("the earnings component") and another portion of which is not attributable to services rendered, then only "the earnings component" shall be subject to the tax.

B. The earned income/compensation and net profits tax levied under ACT 511, as amended, and enacted by the Ordinances and Resolutions of the City of Bethlehem and Coterminous Taxing Districts, shall be applicable to earned income/compensation received and net profits earned in the period beginning January 1 and ending December 31 of each year, or in the fiscal year of taxpayers electing a fiscal year basis under Section 404.B. The tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of tax is subsequently changed. Changes in the rate shall become effective on the date specified in the Ordinances or Resolutions.



- C. Trusts or Estates. Every estate or trust must pay the tax:
  - (1) on net profits resulting from its engagement in any business, trade or other activity which would require the filing of a return by an individual or partnership, and
  - (2) on income which would be subject to the tax if received by an individual or partnership.

**Section 203. What Is Included in Earned Income/Compensation.**

The statutory definitions of “Earned Income/Compensation” and “Net Profits” can be found in SECTION 101 of these Rules and Regulations. The purpose of this section is not to modify these definitions, but to provide additional clarification through various examples and explanations. The examples of earned income/compensation listed below, without intending in any way to limit the provisions of the Ordinances or Resolutions to these examples, are:

- A. Gross Salaries.
- B. Gross Wages.
- C. Commissions.
- D. Bonuses.
- E. Drawing Accounts reported on the current year Form W-2. (If amounts received as a drawing account exceed the salary or commissions earned, the tax is payable on the amounts received. If the employee subsequently repays to the employer any amounts not in fact earned, the tax shall be adjusted accordingly).
- F. Clergy pay.
- G. Incentive Payments: payments received from employers or on behalf of employers, other than the usual compensation, for the purpose of inducing the employee to make a decision – such as buying out an agreement or contract or moving to another location or accepting an early retirement or “Golden Parachute Settlement” are incentive payments. Such payments/settlements constitute taxable income. Incentive payments are not to be considered “retirement” payments. Lump sum payments shall be taxed in the year received by the employee or former employee. If the payment/settlement of such sums is to be made in the future, such sums shall be taxed in the year they are received. Incentive payments include Stock Appreciation Rights (SAR) and/or a phantom stock plan payment, where these payments are attributable to remuneration for services rendered.

**EXAMPLE**

Employer offers to give employee F an INCENTIVE PAYMENT of \$20,000 if employee F agrees to depart or retire before his scheduled date. The \$20,000 is to be paid at the rate of \$5,000 per year over a four-year period after the retirement become effective. The \$20,000 is taxable income. It will be taxed in the years it is received by employee F. That is to say that employee F shall have to include as earned income/compensation/compensation the extra \$5,000 received for/in each of the four years following his retirement.

#### EXAMPLE

The employee has been a product manager with an art supply business for 12 years. He and his wife have purchased a home in the suburbs of Houston for \$80,000, \$55,000 of which they financed through a loan from their bank. The lending rate for the home mortgage was 6% and their mortgage payments were \$520 per month.

Twelve years after purchasing the house, he was offered a transfer to Bethlehem, Pennsylvania to open a sales office and showroom in Bethlehem, Pennsylvania. His employer agreed to reimburse him for his moving expenses if he took the assignment. When he and his wife traveled to Bethlehem to look for a new residence, they were told that a comparable home in Bethlehem, Pennsylvania would be \$130,000 and that the mortgage rate would be 8.5%. The mortgage on their new home would be \$952. His employer was willing to pay the \$432 difference between his old and new mortgage for two years. This form of reimbursement is wages to the employee, subject to the earned income/compensation and payroll tax withholding.

#### EXAMPLE

In a SAR plan, the employee-participant is allowed to share in the appreciation in value of the company stock plan. The employee shares in the appreciation in value of the company stock plan over the period selected.

In a phantom stock plan, the employee shares in the appreciation and is also given the value of the stock at the starting point.

In each of these plans, the employee is not the owner of any shares. By agreement the employee participates in the growth of the business's value through a formula that measures the growth in value of the company's stock. The employee is credited on paper with a percentage of the growth in value, which value is convertible to cash at a future date. The employee will be taxed on the date in the future that he or she receives the cash benefit.

#### EXAMPLE

An employer offers and pays an employee 15% of the purchase price of a house purchased in another location in lieu of the employer acquiring the employee's house and becoming responsible for selling the house. This type of circumstance shall be considered as an incentive for the employee to move to another location. If the payment is restricted or imperfect with a qualified right to enter (confined, temporary, modified, conditioned, limited provisional, guarded, ambiguous, reserved, dependent, defined) it shall not be taxable as earned income/compensation.

The employee is responsible for providing proper documentation to the City of Bethlehem Tax Bureau so as to establish whether this payment is or is not restricted.

Moving expenses which are permitted on Pa. Schedule UE will be deducted.

#### EXAMPLE

Auto manufacturers incentive payments paid by or on behalf of any automobile manufacturer, whether directly to individual salespersons or through a dealership are taxable for local earned income/compensation tax purposes.

- H. Tips and gratuities; honoraria; financial consulting services allowance; travel allowance; moving allowance; mortgage differential; legal service allowance; grossed up income. Reimbursements received in cash, when in excess of actual allowable business expenses. See SECTION 209 for deductions against income.
- I. Fees include: Administrator fee, Director fee, Executor fee, Expert Witness fee, Fiduciary fee, Honoraria fee (if one's profession is being a professional speaker), Trustee fee, any fee received for service performed by the taxpayer, and fees received for decisions made by the taxpayer. The fees referenced herein involve activity and participation on the part of the taxpayer.
- J. Earnings component of stock option plans when the option is exercised. The "earnings component" is considered to be the difference between the stock option price and the fair market value of the stock at the time the option is exercised.

#### EXAMPLE

There is basis under the Local Tax Enabling Act for taxing "the earnings component" of stock option plans. Stock option plans have an earnings component, namely the difference between the option price and the fair market value of the stock when the option is exercised. The difference ("the earnings component") is to be reported on the taxpayer's W-2 Form and is taxable for local earned income/compensation tax purposes, upon the exercise of the stock option. This applies to both qualified and non-qualified plans. It is not that stock options have no value at the time they are granted; rather, the value of the stock option is speculative and not readily ascertainable until exercised. It is precisely for this reason that it is necessary to wait until the exercise of the stock option to compute the associated tax liability.

Employers have the obligation to withhold the local earned income/compensation tax on "the earnings component" of the stock options at the time the options are exercised. Employers should also report "the earnings component" as part of the local wages total on the employee's W-2 Form.

- K. Payments accruing from employment, including but not limited to, salary advances, annual leave, stand-by pay, overtime, vacation, holiday, sickness, and severance or separation pay or benefits; excluding, however, benefits referred to in Section 205.A of these Rules and Regulations.
  - L. Fair market value of non-cash fringe benefits accruing by virtue of employment recognized as taxable by the Pennsylvania Department of Revenue are also to be included as taxable earned income/compensation, unless they are specifically listed in SECTION 205 of these Rules and Regulations as "Exclusions from Earned Income/Compensation."
- EXAMPLES: (taxable non-cash fringe benefits)

- (1) Stock Options (see Section 203.J).
- (2) Group legal services plans.
- (3) Mortgage assistance in lieu of other compensation.
- (4) Non-cash payment for services rendered.

- (5) Stock bonus plans.
  - (6) Automobile allowance that exceeds actual expenses incurred.
  - (7) Taxpayer A receives a salary of \$70,000. In addition to this salary, Taxpayer A has exercised a non-qualified stock option as reported on Form W2, with an earnings component of \$11,000, and was compensated for spouse's travel expenses in the amount taxable non-cash fringe benefits of \$3,100. Therefore Taxpayer A's total taxable compensation is \$84,100.
  - (8) Taxpayer B receives a salary of \$55,000, of which \$9,000 is deferred to a 401(k) plan for retirement. Taxpayer B's local taxable earned income/compensation is \$55,000. Any plan which serves to reduce gross taxable wages for Federal Income tax purposes is not recognized as an exclusion for Earned Income/Compensation tax purposes.
  - (9) Taxpayer C is a minister, employed by a church, but he does not live in a church provided parsonage. Taxpayer C receives a salary of \$30,000, a housing allowance of \$10,000, and a car/travel expense allowance of \$3,000. The total taxable compensation is \$33,000. To claim unreimbursed business expenses associated with the car/travel allowance, Taxpayer C can file a Pennsylvania Department of Revenue Schedule UE as a deduction from the taxable compensation. If necessary, a copy of Federal Form 2106 may be required to substantiate the Pa. Schedule UE amounts.
  - (10) Taxpayer D has recently moved into the City of Bethlehem. In addition to a salary of \$43,000, Taxpayer D received \$10,000 in moving expense reimbursements from his/her employer. The total taxable compensation for Taxpayer D is \$53,000. Taxpayer D can file a Pennsylvania Department of Revenue Schedule UE for moving expenses in excess of the reimbursed amount. Federal Form 3903 must accompany the Schedule UE.
- M. Taxes assumed by the employer for the employee. The payment of taxes by an employer on behalf of an employee in consideration for services rendered by the employee is a gain derived by the employee for his or her labor and is therefore considered to be a part of his or her Earned Income/Compensation. The payment of taxes for an employee is taxable in the year the taxes were paid and reported and must be reported on the employee's W-2 or a similar form.
- N. Regular wages or other compensation received during a period of sickness or disability.
- O. Employee contributions to deferred compensation plans and old age or retirement benefit programs, or cafeteria plans.

**NOTE ON CAFETERIA PLANS**

**Any plan which through an employee's contribution serves to reduce gross taxable wages for Federal Income Tax purposes is not recognized as an exclusion for the Earned Income/Compensation Tax and therefore will be taxed accordingly.**

**EXAMPLE**

**An employee's contribution/deferment under Section 403(b); Section 457(b); or Section 401(k) of the Internal Revenue Code will not be recognized as a reduction of taxable wages for purposes of this tax.**

- P. Value of meals and lodging furnished by employers to domestics or other employees, unless provided for the convenience of the employer, on the employer's premises. When lodging is provided by the employer to the employee, and the employee is not required:

- (1) to reside on his or her employer's premises by the employer, or
- (2) by the employer to reside temporarily at a location other than the employer's premises as a requirement of the employee's position and/or employment:

then the fair market value of the employer supplied meals and lodging shall be included in the employee's Earned Income/Compensation as it shall be taxable.

- Q. Scholarships, stipends, grants, and fellowships shall be taxed as Earned Income/Compensation, **IF SERVICES ARE RENDERED IN CONNECTION THEREWITH.**

See Appendix, SECTION 601, **61 Pa. Code § 101.6 Compensation.** (b) for determining whether scholarships, stipends, grants and fellowships are taxable.

- R. "RESERVED"

- S. Premature Profit Distributions not rolled over into a qualified pension plan, individual retirement account or an annuity plan.

- T. Premature withdrawal or early distribution from retirement or pension plan, on the contributions not taxed when earned. This can include employer contributions, interest earned and employee contributions actually received by the taxpayer from a regular IRA or from a ROTH IRA, to the extent that such employer and/or employee contributed portion of the principal being withdrawn was not previously taxed for local earned income/ compensation tax, unless the premature principal withdrawal is rolled over without passing to the taxpayer. The taxpayer should use the cost recovery method of accounting to determine the taxable portion of only the previously not taxed principal which the employer contributed.

- U. Cafeteria Plan money, credits and cash reimbursements made by an employer to an employee for dependent care, legal services, or other personal services.

A Cafeteria or Flexible Benefit Plan is one in which an employee may choose from a package of employer-provided fringe benefits, some of which may be taxable and some of which may be non-taxable. Employer contributions to a Cafeteria Plan or Flexible Benefit Plan are included in gross compensation only to the extent the employee has elected taxable benefits.

Generally, a plan that provides for deferred compensation is not a Cafeteria Plan. However, certain profit sharing or stock bonus plans, and certain life insurance plans can

be offered through a cafeteria plan even though they provide for deferred compensation. Where an employee has elected to participate in a cafeteria plan or flexible benefit plan that provides for deferred compensation, the cafeteria plan or flexible benefit plan will be considered as taxable compensation for earned income/compensation tax purposes.

V. Deferred compensation plan distribution (pre-retirement), to the extent that it exceeds employee contributions into the plan. Distributions received prior to the taxpayer's actual date of retirement, including but not limited to ESOP, PAYSOP, 401k, 403b, cafeteria plans, etc. shall be taxable on the interest and employer's contributed portion, if the distribution is not rolled into an individual retirement account, annuity plan, or another qualified retirement plan.

W. That portion of salary or wages which an employee contributes under a plan which provides for an employee's election to contribute a portion of his or her salary or wages to receive a benefit in lieu of receiving the cash is taxable. The actual amount the employee elects not to receive in cash is the amount which is taxable and shall be included as gross salary or wages when filing the Final Individual Tax Return with the City of Bethlehem Tax Bureau, as the employee has constructive control of the cash.

The amount is to be included in the W-2 total for local wages and the applicable Earned Income/Compensation tax is also to be withheld on this portion of the employees gross salary or wages.

X. Back pay awards when the payment represents salary, wages, commissions, bonuses, incentive payments, fees, tips, or other compensation to which the employee is entitled for services rendered is taxable. However, back pay and retroactive wage increases which have been proven to constitute punitive damages are generally not taxable.

Y. All other forms of earned income/compensation or remuneration for an employee's services rendered, whether this compensation is received directly or through an agent and whether it is paid in cash, property, or services. This shall include prizes and awards when the recipient has rendered substantial service as a condition to receive the prize or award. The manner of employment, or the rate of payment, or the kind of payment will not cause the person to be exempt from the applicable tax. Compensation received in the form of property shall be taxed at its fair market value at the time of receipt. Neither the kind nor the rate of payment, nor the manner of employment, exempts an employee from the tax.

Z. Covenants not to compete which arise "within an employment relationship," such as when an employee signs a covenant not to compete with his or her employer if and when he or she is no longer employed. In such a case, the consideration for the agreement is usually provided at the time the agreement is executed, often consists of the employment itself.

To the extent that explicit compensation is provided to the employee during his or her employment, such compensation shall be taxable as earned income/compensation.

See *Rauch v Philadelphia*, 708 A.2d 142 (Pa. Cmwlth. 1998)

AA. Termination or severance pay received by the taxpayer.

- BB. Golden Parachute payments.
- CC. Taxpayer payments received in the form of “debt forgiveness” as payment of compensable services provided by the taxpayer are taxable.
- DD. Deceased taxpayer’s earned income/compensation and net profits from self employment.
- EE. Guaranteed Payments received by Individual Partners of a Partnership are to be included on the individual taxpayer’s PA RK-1 form.

#### **Section 204. What Is Included In Net Profits.**

The statutory definitions of “Net Profits” can be found in Section 101, Definitions. The purpose of this section is not to modify this definition, but to provide additional clarification through various examples and explanations. This list of examples and explanations is not exhaustive and in no way limits what constitutes taxable profits.

Net profits shall be determined on a cash or accrual basis in accordance with accepted accounting principles and practices, but without deduction of taxes based on income.

Persons, Activities and Property are subject to the **TAX** on Net Profits. Partnership income, including guaranteed payments, which is the net income from business, profession or farming is taxable.

Persons are subject to the **TAX** on Net Profits: Any individual engaged in a business, trade, profession or other activity carried on for a profit, shall pay the **TAX** on the Net Profits there from. The form of business shall not be the determining factor.

Examples of "net profits" (without intending in any way to limit the provisions of the Ordinances or Resolutions to these examples) are:

- A. The net profits of a business, profession or farm conducted by a sole proprietor.
- B. The net profits of a business, profession or farm conducted as a partnership.
- C. Royalties and patent or copyright fees received by authors, composers, inventors and other such individuals.
- D. The net profits of a limited liability company as reference in ACT 106 of 1994 known as the Limited Liability Company ACT, Section 8925.
- E. Net profits from the operation of hotels, motels, trailer camps, tourist homes, boarding houses, bed and breakfast establishments, mobile home parks, child care, adult care, day care and other similar businesses.
- F. Net profits from the business of renting personal property.
- G. Real estate rental net profits reported on Pa. Schedule C, received in the course of a trade or business are taxable. Rental income received from the operation of real estate is subject to this tax when the owner actively manages and supervises the property himself or herself or through agents or servants, by providing labor and service in connection with it. The furnishing of labor and service signifies activity and participation on the part

of the owner and classifies him or her as carrying on a business.

When any property falls within a taxable classification the manner of its acquisition, i.e., purchase, gift, inheritance, fiduciary, or as a fiduciary mortgagor in possession, etc., does not affect the taxability of the income derived therefrom, unless specifically stated otherwise in these Rules and Regulations.

- H. All other net profits of business activities except any portion thereof resulting from items not taxed under the provisions of the Ordinances or Resolutions as set forth in Section 205 hereof.

In calculations utilized to determine the correct net profits, the following items are to be included as they shall be considered to be a part or component of business income:

- (1) Interest received on credit sales
- (2) Interest received on business savings, checking and investment accounts.
- (3) Interest earned on withheld employee taxes.
- (4) Discounts received from Pennsylvania Department of Revenue for timely remittance of sales tax.
- (5) Damages, awards and or settlements received, except for personal injury cases. Both punitive and compensatory damages, awards and/or settlements received in personal injury cases are excluded when physical injury or sickness has occurred. Punitive damages, awards, and/or settlements received in personal injury cases where no physical sickness or injury has occurred, such as defamation of character actions, are taxable income for determining net profits.

- I. In determining net profits subject to tax under the provisions of the Ordinances and Resolutions, the net profit of each business activity is to be determined separately with reference only to the gross income and expenses of that business and without mixing the income of one activity with the expenses of another. Persons engaged in more than one business activity during the tax year may not offset a loss in one activity against the gain in another. The tax is imposed on the net profit of each business activity separately. A loss incurred from a profession, business activity or venture, regardless of the nature, may not be deducted from the net profit of any other business activity. (See *Aronson vs. City of Pittsburgh*, 86 Pa.Cmwlth. 591, 485 A.2d 890 (1985).

#### EXAMPLE

A person who receives net profits from the operation of a sole proprietorship may not offset against such profits the net losses incurred as a partner in another business activity.

- J. Each resident partner or non-resident member of a partnership, association or other entity must pay the tax on his or her share of the net profits whether or not it is actually distributed to him or her.
- K. The net profits received by a general partner of a limited partnership entity (15 Pa. C.S.A. 8925).



- L. Guaranteed payments to partners/taxpayers as reported on Pennsylvania Schedule RK-1.
- M. “Covenants Not To Compete” executed after December 31, 2001 which involve taxpayers who are not employees. The promise not to compete and the subsequent undertaking of that effort pursuant to a business arrangement is sufficient to bring this item within the purview of the Net Profits Tax. The fact that this is a negative covenant or rather, a promise not to do something does not remove it from the realm of business activity which is undertaken as part and parcel of a contract for a fee. The act of not competing is the consideration contributed to this contract by the taxpayer. It is consideration that has a business purpose, not a personal purpose.
- N. “Bonus Depreciation” amounts are to be calculated for local income tax purposes in the same manner as calculated for Pennsylvania Personal Income purposes and not as according to Federal Income Tax provisions.

**Section 205. Exclusions From Tax.**

The following income sources are not considered to be earned income/compensation and are not subject to the tax:

- A. Sickness, disability, or retirement benefits paid, other than regular wages as provided in Section 203.N.
- B. Benefits paid under any public assistance, unemployment or worker's compensation legislation, including supplemental unemployment benefits (SUB pay), or strike pay.
- C. Compensation or bonuses paid by a State or by the United States for active military service in the Armed Forces is to be excluded from compensation for Local Income Tax purposes.
- D. Death benefit payments to an employee's beneficiary or estate, whether payable in a lump sum or otherwise.
- E. Proceeds of Life Insurance policies or annuities.
- F. Cash or property received as a gift, by will, or by statutes of descent and distribution.
- G. Personal interest and dividends. (Interest earned on business accounts must be included in the calculations of net profits and may not be deducted). All forms of interest, i.e., on obligations of the United States or its possessions, the Commonwealth of Pennsylvania, or any political subdivision thereof, or on any bank or postal savings accounts, mortgages, or loans received by an individual, except those amounts representing compensation by virtue of being remuneration for services provided, such as those amounts reported as “wages, salaries, tips, etc.” on the appropriate lines of the taxpayer’s W-2 form.

- H. All forms of dividends received by a person, except those amounts representing earnings or compensation by virtue of being remuneration for services provided, such as those amounts reported as “wages, salaries, tips, etc.” on the appropriate lines of the taxpayer’s W-2 form.
- I. Rents derived from mere “passive” or “investment” ownership or subleasing of real estate without the furnishing by the lessor of services to the leased premises or to the lessee other than gas, electricity, water, sewage, and heat. Such rents are considered to be return solely from invested capital and not profits from the operation of a business activity taxed by the Ordinances or Resolutions.
- J. Value of meals and lodging furnished by the employer to domestics or other employees for the convenience of the employer on the employer’s premises. However, when board or lodging is provided by the employer and the employee is not required to reside on the employer’s premises by his or her employer, the fair market value of the board or lodging shall be included in the employee’s earnings as it shall be considered to be taxable earned income/compensation.
- K. Capital gains as reported on Pennsylvania Form PA-40, Line 5.
- L. Social Security benefits.
- M. Veterans administration allotments for subsistence or disability.
- N. Income from pensions or old age and retirement benefit plans received upon retirement.
- O. Lottery winnings.
- P. Individual Retirement Account (I.R.A.) payments received upon retirement.
- Q. Profits applicable to limited partners within a limited partnership entity.
- R. A net loss on a self-employment business schedule may be deducted only from that individual’s earned income/compensation for that tax year. A Schedule E loss will not offset earned income/compensation as a Schedule E net profit will not be taxed.
- S. S Corporation income. (This does not include compensation paid to the officers of an S corporation nor does this include any salaries, wages, commissions, fees, or other compensation received by an officer, director, stock holder, or employee of an S Corporation).
- T. Distributions from deferred compensation plans to the extent that such distributions represent a return of the taxpayer’s own contribution upon which he originally paid the tax.
- U. Damages for personal injuries.
- V. Payments received for child support and alimony.
- W. Scholarships and fellowships awarded from detached generosity on the basis of financial need or academic achievement for the sole purpose of encouraging or allowing the

recipient to further his or her educational development and not as compensation for past, present or future services. A scholarship or fellowship shall constitute earned income/compensation if the recipient must apply his or her skills and training to advance research, creative work or some other project or activity.

- X. Prizes and awards unless the recipient must render substantial service as a condition to receiving the prize or award.
- Y. Profit from the casual exchange or sale of property.
- Z. Parsonage/housing/rent/utilities payments received by a member of the clergy.
- AA. Jury duty pay.

The items listed and described within Section 205 are not to be listed as deductions against income as they are a list of non-taxable income sources.

#### **Section 206. Resident Taxation.**

The entire earned income/compensation and net profits received and/or earned by a resident of City of Bethlehem, or its Coterminous Taxing Districts is subject to this tax. Neither the source of the earned income/compensation or net profits nor the place where it is received and/or earned exempts a resident from the tax.

#### **Section 207. Non-Resident Taxation.**

The entire earned income/compensation and net profits received and/or earned by a non-resident of the Taxing District who is employed in the Taxing District or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, and is not required to pay a similar tax elsewhere, is subject to this tax; provided, however, that non-residents are not subject to taxation by school districts.

Any person claiming non-residency status must provide proof of non-residency such as a passport with a valid student or exchange visitor's visa, a driver's license, a local tax return from his or her resident municipality, voter registration card, or other acceptable documentation. Any person claiming non-residency exemption status must provide proof of payment of the local earned income/compensation and net profits tax elsewhere for the concurrent time period.

The earned income/compensation tax, as levied on non-residents by the Ordinances and Resolutions of the City of Bethlehem and its Coterminous Taxing Districts, shall relate to and is imposed at the rate of one-percent (1%) upon the salaries, wages, commissions and other compensation paid by an employer or on his or her behalf to a person who is employed by him or her. Therefore, if an employer has its place of business within the City of Bethlehem or one of its Coterminous Taxing Districts employs an individual, and all salaries, wages, etc., are paid to the employee from said employer, then all wages, salaries, etc. are taxable at the rate of one percent (1%). It makes no difference that the employee spends a significant amount of time outside of the City of Bethlehem or its Coterminous Taxing Districts on business. The critical factor is whether the salaries, wages, etc. are paid to the employee from the employer or business located within our taxing jurisdiction(s). If this is the case, then the **TAX** is properly levied and no refunds should be issued.

## Section 208. Credits.

Credit for earned income/compensation and/or net profits tax paid for the concurrent time period to another state or political subdivision will be allowed as a deduction from the liability of taxpayers for tax imposed under the provisions of the Ordinances and Resolutions and as provided by Act 511. Such allowable credit will be available up to the maximum effective rate of the tax levied by the Taxing District **on the identical income and/or net profits taxed by the City of Bethlehem, or its Coterminous Taxing Districts, and other Commonwealth of Pennsylvania and/or another state's political subdivisions**; provided, however, that this same credit has not already been applied towards the taxpayer's liability for the Pennsylvania Personal Income Tax for the same period. Evidence of the amount of gross earnings and payments of the applicable tax on earned income/compensation or net profits is required before this credit is allowed.

### EXAMPLES:

- (1) Taxpayer G, a RESIDENT within our taxing jurisdiction, is employed or self-employed in Philadelphia and pays the Philadelphia income tax. Taxpayer G is entitled to a credit of up to 1% (the current tax rate for the City of Bethlehem and its Coterminous Taxing Districts) of the earning income/compensation and/or net profits taxed by the City of Philadelphia, towards his or her local earned income/compensation and or net profits tax due to the City of Bethlehem or its Coterminous Taxing Districts.

Since the City of Philadelphia is a “non-reciprocating” tax district that derives its power to levy a local income tax by virtue of the “Sterling ACT” at a rate higher than that allowed by the Local Tax Enabling ACT, tax paid to Philadelphia cannot be applied as a credit to earned income/compensation and/or net profits earned outside the City of Philadelphia, not subject to the Philadelphia local income tax. The City of Bethlehem Tax Bureau will not refund the Philadelphia local income tax paid in excess of the tax due to Taxpayer G’s resident municipality.

- (2) Taxpayer H, a RESIDENT within our taxing jurisdiction, is employed or self-employed in City A in the State of Delaware, which exacts a 1.3% on his or her earned income/compensation and/or net profits. Taxpayer H is entitled to a credit of up to 1% (the current tax rate for the City of Bethlehem and its Coterminous Taxing Districts) of the earned income/compensation and/or net profits taxed by City A, Delaware.
- (3) Taxpayer I, a RESIDENT within our taxing jurisdiction, is a partner in a national CPA firm with offices in our taxing jurisdiction, plus Chicago, New York and New Orleans. Taxpayer I pays taxes on income earned in some of these cities. Taxpayer I may take credit towards the **TAX** using the following method:

- (a) Determine the income earned in each locality during the tax year.
  - \$ 50,000 in Bethlehem
  - 5,000 in New York City
  - 15,000 in Chicago
  - 10,000 in New Orleans
  - \$ 80,000 gross income – all taxable locally

- (b) Determine the maximum credit that can be taken for taxes paid to the other localities.

$$\text{\$ } 5,000 \times 1\% = \text{\$ } 50.00$$

$$15,000 \times 1\% = 150.00$$

$$10,000 \times 1\% = \underline{100.00}$$

\$ 300.00 maximum allowable credit that can be applied towards the **TAX**.

- (c) List the amount of tax paid to each locality.

\$ 200 to New York City

400 to Chicago

600 to New Orleans

\$ 1,200 total paid to other localities

- (d) Subtract from the total the credit already taken on the PA State Return PA-40.

\$ 1,200 total paid to other localities

735 credit taken on PA-40

\$ 465 credit remaining

- The maximum credit that can be applied towards the **TAX** is \$300 – see step (b) above. This amount (\$300) can be entered on our Final Individual Earned Income Tax Return as an out-of state/miscellaneous credit. If the credit remaining after step (d) had been less than \$300, then the lesser amount would be allowed as a credit against the **TAX**.

Residents who take credit for taxes paid in other jurisdictions shall provide the City of Bethlehem Tax Bureau with an exact duplicate copy of the tax return as filed with the other Taxing Jurisdictions, along with an exact duplicate copy of their Commonwealth of Pennsylvania Individual Income Tax Return (PA-40) and any additional documentation or schedules requested by the Tax Bureau.

Residents who pay taxes to “any foreign country” **SHALL NOT BE ELIGILBE FOR CREDITS** against the earned income/compensation and/or net profits tax.

## **Section 209. Deductions and Losses.**

### **A. Deductions:**

Employee's Unreimbursed Business Expenses - Business Expenses for which an employee has not been reimbursed are allowed as a deduction from earned income/compensation provided such expenses meet the "four part test" as established by the Pennsylvania Department of Revenue. That is, the expense must be "ordinary, actual, reasonable, and necessary" in order to be deducted from earned income/compensation. This means that any expense claimed as a deduction from gross earnings must be:

1. Customary and accepted in the industry or occupation in which the taxpayer works.
2. Directly related to the taxpayer's present occupation as opposed to an occupation in which he plans to enter in the future.
3. Reasonable in amount and not lavish or excessive.

4. Necessary to enable the taxpayer to properly perform the duties of his present employment.

Those expenses not meeting the "four part test" are not allowed as a deduction from earned income/compensation. The taxpayer has the burden of proving that any expense claimed is ordinary, actual, reasonable and necessary and must maintain adequate and sufficient records to substantiate any such deduction taken.

Examples of expenses which may not be deducted from earned income/compensation include (but are not limited to): Travel (commuting) to and from work; meals and lodging unless the "away from home overnight test" is met; capital expenditures; moving, educational and office-in-home expenses except as allowed by the Pennsylvania Department of Revenue; and personal expenses such as medical, dental, life insurance premiums, contributions, interest, other taxes, gifts and entertainment, dues to professional or fraternal societies, club memberships, subscriptions to publications, alimony, babysitting, books, casualty or theft losses, license fees, clothing suitable for everyday use, employee deferred compensation plan contributions, Federal Form 1040 tax credits and other taxes, individual retirement account (IRA) contributions, employee contributions to Simplified Employee Pension Plans (S.E.P.), Federal State or Local income taxes, gift estate or inheritance taxes and personal taxes, penalties or interest paid on delinquent income taxes, tools for use at home, Federal Form 1040 itemized deductions or the Occupational Privilege Tax.

Employees engaged in income producing activities separate and apart from their earned income/compensation may be permitted necessary, ordinary, reasonable and actual expenses. However, employees whose activities do not generate supplemental income shall not be permitted deductions for associated expenses.

Business Expenses as documented on Pennsylvania Department of Revenue Schedule UE are permitted. If employee business expenses are claimed a copy of PA Schedule UE, and all supporting forms, schedules and/or worksheets, must be provided. If moving expenses are claimed, a copy of PA Schedule UE and tax Form 214 must be provided to the Tax Bureau.

**Should the taxpayer omit the required expense deduction form, as well as supporting forms, schedules and worksheets, or if the expense deduction form is not fully completed, the expense deduction will be systematically disallowed and denied without notification to the taxpayer.**

B. Losses:

Taxpayers are allowed to offset a gain in one class of income against a loss in another class of income. If a net loss is incurred from the operation one or more business activities, the amount of the net loss or losses must be listed separately (not combined with the net profit of any other business or businesses). Losses may only be applied in the year in which the loss was actually incurred, and may not be carried forward to subsequent years.

One person's losses may not be deducted from his or her spouse's earnings.

S Corporation losses may not offset the earned income/compensation or net profit of any taxpayer.

Losses from items or activities which are excluded from the **TAX** may not be used to offset earned income/compensation or net profits.

**Section 210. Allocation/Appportionment of Earned Income/Compensation and Net Profits Tax For Non-Residents.**

GENERALLY – A non-resident working or self-employed within the City of Bethlehem or its Coterminous Taxing Districts which levies a tax on non-residents is subject to a 1% tax on all earned income/compensation and/or net profits for work done or services provided or originating in or directed from within the City of Bethlehem or its Coterminous Taxing Districts.

- A. Compensation Allocation: Apportionment of earned income/compensation tax to a non-resident's earnings generated from full time employment within the City of Bethlehem or one of its Coterminous Taxing Districts which taxes non-residents:
  - 1. Where the Pennsylvania borough, township, city, or school district (except Philadelphia) of which the employee is a resident imposes and collect a **TAX** of 1% or more on earned income/compensation, the earnings of such employee are required to be taxed by the employer in the City of Bethlehem or its Coterminous Taxing Districts. The Tax Bureau will collect the withheld tax and forward it to the employee's resident municipality and/or school district of record.
  - 2. Where the Pennsylvania borough, township, city, or school district (except Philadelphia) of which the employee is a resident imposes and collects a **TAX** of less than 1% on earned income/compensation, the earned income/compensation earned within the City of Bethlehem or its Coterminous Taxing Jurisdictions shall be taxed at 1% by the employer. The Tax Bureau will collect the withheld tax and forward the amount of tax imposed by the employee's resident taxing jurisdiction. Any difference between the tax actually imposed by the employee's resident Taxing Jurisdiction(s) and the amount of tax withheld will be retained by the municipality where the employer is located.
  - 3. Non-residents working full-time in one or more of our Taxing Jurisdictions which tax non-residents, by virtue of a contract of employment, on a 5 day per week basis (Monday through Friday) **MAY NOT EXCLUDE** from his or her earned income/compensation, compensation for days which he or she is compensated but not required to work (i.e., Saturdays, Sundays, Holidays, vacations, etc.).
- B. Non-residents working part-time in the City of Bethlehem or its Coterminous Taxing Districts.
  - 1. Where a non-resident receives earned income/compensation for work done or services provided or originating in or directed from within the City of Bethlehem or its Coterminous Taxing Districts and additionally receives earned income/compensation for work done or services provided or originating in or directed from areas outside the City of Bethlehem or its Coterminous Taxing Districts,

only that income attributable to Bethlehem or its Coterminous Taxing Districts shall be subject to the **TAX**.

2. The City of Bethlehem Tax Bureau **DOES NOT ALLOW** non-residents employed within its Taxing Jurisdiction(s) to use the “Days Present” method of apportioning income. Non-residents are taxed on total earned income/compensation from sources within the City of Bethlehem or its Coterminous Taxing Districts.

C. Allocation of Net Profits of Non-Residents.

1. Where the entire business is transacted within the City of Bethlehem or its Coterminous Taxing Districts. A non-resident individual conducting any business, trade, profession, or other activity is subject to the **TAX** on the entire net profits thereof if the entire business is conducted or carried on in the tax jurisdiction(s).
2. Where the sole store or office is in the City of Bethlehem or its Coterminous Taxing Districts. A non-resident who maintains his or her sole store or office in the Taxing Jurisdiction and transacts business both within and outside the Taxing Jurisdiction is **NOT ENTITLED** to an allocation of his or her net profits. The business status, in such instances, is considered transacted as flowing through the municipality/Taxing Jurisdiction’s store or office.

EXAMPLE:

A non-resident surgeon who maintains an office within the Taxing Jurisdiction and no other office outside the Taxing Jurisdiction, would not be permitted to allocate the **TAX** as to fees received for surgery actually performed outside the Taxing Jurisdiction. The same example would apply to an attorney who maintains his or her sole office within the municipality.

3. When a non-resident is entitled to an allocation of net profits. A non-resident who, in addition to having a place of business or office within the Taxing Jurisdiction, also maintains a place of business or office outside the Taxing Jurisdiction shall be entitled to an allocation of his or her net profits. Such allocation is subject to the approval of the Officer and shall only be considered if sufficient proof is provided that the place of business or office outside the Taxing Jurisdiction is an established, self-sustaining, bona fide branch office or store.

**METHODS OF ALLOCATION:**

Special Allocation Formula. Where it is impossible to allocate with certainty the net profits subject to the **TAX** by reason of the absence of a place of business or office within the Taxing Jurisdiction, or because the non-resident taxpayer’s records do not disclose a breakdown of the actual net profits earned within the Taxing Jurisdiction, or for any other reason; the Officer, upon request, may permit the use of a special allocation formula to effect a fair and proper apportionment so that only that portion of the net profits attributable to the Taxing Jurisdiction is included in the measure of the **TAX**. The factors to consider in determining this special allocation are the following:



- (1) REAL AND TANGIBLE PROPERTY FACTOR. The taxpayer computes a percentage on the basis of a fraction using the total average book value of all such property located within the Taxing Jurisdiction as the numerator, and the total average book value of all property located within and outside the Taxing Jurisdiction as the denominator.
- (2) WAGES AND SALARIES FACTOR. A percentage is computed on the basis of a fraction using the total amount of wages and salaries paid to employees who work in, or from, or are attached to places of business located within the Taxing Jurisdiction as the numerator, and the total wages and salaries paid to all employees within and outside the Taxing Jurisdiction as the denominator.
- (3) GROSS RECEIPTS FACTOR. A percentage is computed on the basis of a fraction using as the numerator gross receipts from sales or services attributable to the Taxing Jurisdiction and as the denominator all gross receipts from sales or services made within and outside the Taxing Jurisdiction.
- (4) AVERAGING. The percentages obtained for the three factors described herein above are to be added together and the total thereof divided by three (3) to obtain the average of the three percentages. If the numerator and/or the denominator of any fraction are zero, the factor is deemed to be non-existent and shall be omitted in calculating the average of the percentages.

**EXAMPLE:**

- |     |  |                        |     |
|-----|--|------------------------|-----|
| (1) | Average Real & Tangible Personal<br><u>Property in the Taxing Jurisdiction</u><br>Average Real & Tangible Personal<br>Property within and outside the<br>Taxing Jurisdiction | \$ 25,000<br>\$100,000 | 25% |
| (2) | Wages & Salaries in Taxing Jurisdiction<br>Wages & Salaries within and outside the<br>Taxing Jurisdiction  | \$10,000<br>\$50,000   | 20% |
| (3) | Gross Receipts in Taxing Jurisdiction<br>Gross Receipts within and outside the<br>Taxing Jurisdiction  | \$ 75,000<br>\$300,000 | 25% |
| (4) | 25% + 20% + 25% = 70% then 70% divided by 3 factors = 23 1/3%  |                        |     |

23 1/3% would be the allocation percentage for taxable net profits.

### ARTICLE III COLLECTION AT THE SOURCE

#### **Section 301. Employers Required to Withhold.**

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business located within the Taxing District and who employs one or more persons (other than domestic

servants in a private home) for a salary, wage, commission, or other compensation, shall deduct the tax from the employee's wage at the time of payment thereof.

B.      Fiduciary Status - Employers who withhold earned income/compensation tax from employees, and the person responsible for the transmission of earned income/compensation tax withheld by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

C.      Withholding by employers from musicians, entertainers, sports participants, clergy and domestics:

1.      Musicians:

In the field of professional music there has arisen the practice of engaging musicians exclusively through a so-called "contractor." The practice, which arose by prescription of the American Federation of Musicians and of local union regulations, enables the purchaser of music to deal with only one of the number of musicians required for a particular event or occasion.

"Contractor" – The term contractor means that individual through whom the purchaser and the musician(s) negotiate the contract of service and the performance thereof. The contractor may or may not perform actual music service under a contract which he or she has negotiated.

"Purchaser of Music" – The person, partnership, organization, or association for whom or which the musical services are to be performed or furnished, and who exercises an employer's control over the conduct of the musicians. Where a contract for the purchase of music has been executed between a purchaser and a contractor, then the musicians shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for the withholding, and remittance to the Tax Bureau, of the **TAX** from the wages paid to the musicians.

"Name Bands and Orchestras" – A name band or orchestra is one which is identified or known by a name and which holds itself out to the public as a permanent organization, and in addition has either (a) a fixed personnel or (b) the individual member musician has contracted for his or her services with the leader or owner of the band at a fixed salary, by term or by individual engagement, and over whom the purchaser of music has no direct control. The leader or owner of the band shall be responsible for withholding the tax from the wages paid to members of such name bands, and remitting the withheld tax to the Tax Bureau.

2.      Entertainers other than Musicians:

An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed does not exercise an employer's control over the entertainer.

The owner of a club, café, taproom, theatre or of any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as

an employer of entertainers. Such employer must deduct, and remit to the Tax Bureau, the tax withheld from the earned income/compensation paid to the entertainer.

3. Promoters of boxing exhibitions and other sporting events are required to withhold the **TAX** from the earned income/compensation paid to the contestants engaged in the particular sporting event.

4. Minister, Rabbis and Clergymen:

Salaries paid by organized religious bodies to ministers, rabbis, clergymen, evangelists or other religious workers are taxable. The organized religious body shall withhold the **TAX** upon such salaries and make remittance to the Tax Bureau.

5. Domestics:

The earned income/compensation received by domestics is taxable. The employer may, with the consent of the domestic, withhold the tax. Where the duties of domestics require them to live at their place of employment, board and lodging shall not be considered as wages or salary earned.

#### **Section 302. Voluntary Withholding.**

Any employer located outside the Taxing District may voluntarily withhold the tax from employees who are residents of Taxing District but are employed outside the Taxing District. Such employers assume the fiduciary responsibilities as outlined in Section 301.B.

#### **Section 303. Registration of Employers.**

A. Each employer withholding or required to withhold tax pursuant to Sections 301 and 302 shall register with the City of Bethlehem Tax Bureau such employer's name and address and such other information as the Officer may require within fifteen (15) days after becoming a withholding employer.

B. All employers who have a place of business located within the Taxing District shall maintain complete records of all employees for a period of six (6) years in such form as to enable the Officer to determine the employers' liability to withhold for each employee, the amount of taxable income for each employee, the actual amount of tax withheld, the actual amount transmitted to the Officer and such other information available to such employers as will enable the Officer to carry out his or her responsibilities.

#### **Section 304. Liability of Employee.**

Failure or omission of any employer to withhold the tax shall not relieve the employee from payment of the tax, or from complying with the requirements relating to the filing of declarations and returns.

**ARTICLE IV**  
**PAYMENT OF TAX AND RETURNS**

**Section 401. Annual Returns of Taxpayers.**

A. On or before April 15 of each year, every person who was:

- (1) a resident of the Taxing District who was employed or engaged in the operation of a business, profession, or other activity for income or profit; or
- (2) a non-resident of the Taxing District who was employed in the Taxing District or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, for all or any part of the preceding calendar year; shall file with the City of Bethlehem Tax Bureau an Annual Tax Return showing all earned income/compensation and net profits received and/or earned for the previous year.

B. Persons residing in more than one taxing district as a result of moving during the calendar year must file an Annual Tax Return with the Officer for each district in which they resided during the year.

Tax Bureau employees have the authority to request and receive or view a pay stub or letter from the taxpayer's employer or employers for the applicable period of time relevant to the tax filing period. The pay stub or letter from the employer should indicate the gross earnings and earned income/compensation tax withheld for each period and taxing authority. To facilitate tax return processing this information must accompany each tax return when it is received. Alternatively, the taxpayer's earned income/compensation and/or net profits for the year may be divided by twelve (12) months, and multiplied by the number of months appropriate for each Taxing Jurisdiction.

C. If a person receives an Annual Tax Return from the City of Bethlehem Tax Bureau and has no earned income/compensation to report, the word "none" shall be entered on the Annual Tax Return, and the return shall be signed, dated, and returned to the City of Bethlehem Tax Bureau with an explanation (Military Service, Retired, Disability Income Only, Unemployment Compensation Only, S Corporation Only, Housewife, Unemployed Student, or Deceased).

D. If net profits are received, the type of business, profession or activity shall be indicated on the Annual Tax Return and the amount of the profit shall be shown on the appropriate line of the return. If a net loss is incurred in the operation of one business activity, it may not be offset against the net profit of another business activities. Losses shall be indicated as zero in all calculations involving net profits, and zero shall be entered on the appropriate line of the Annual Tax Return. There shall also be attached to the Annual Tax Return a copy of the appropriate Pennsylvania Tax Form PA-40 and Pennsylvania Schedules C, E, F, UE, Pa. Schedule RK-1 or Pa. NRK-1 to substantiate profits and/or losses indicated. Schedule E profits are not taxed. Schedule E losses cannot be used to offset earned income/compensation or other profits.

E. When a return is made for a fiscal year, the return shall be filed within one hundred and five (105) days from the end of said fiscal year.

F. The Annual Tax Return shall also show the taxpayer's name, Social Security number, address, place or places of employment or business, the amount of tax due, the amount of credit claimed for tax withheld by an employer (with a copy of the Earnings and Tax Statement showing the amount of

tax withheld) and such other information as may be indicated on the return form or as may be required by the Officer.

G. Every person subject to the tax shall file such return regardless of the fact that his or her wages may have been subject to withholding of the tax by his or her employer and regardless of whether or not any tax is due.

H. At the time of filing the annual return, the taxpayer shall pay any tax due. Total balances less than \$1.00 need not be paid. Tax Installment Contracts are available to taxpayers meeting the requirements set forth in SECTION 512 when approved by the Officer.

I. The annual tax return must be signed and dated by the taxpayer in the space provided.

J. JOINT FILING of an annual return by husband and wife shall be allowed, provided that there is no combining of earned income/compensations, net profits (losses), taxes paid by taxpayers, taxes withheld by employers, or unreimbursed business expenses. Each taxpayer shall report his or her earned income/ compensation(s), net profits(s), taxes paid by the taxpayer, taxes withheld by the taxpayer's employer, and business expenses, individually, in the columns on the annual tax return headed by their social security number.

K. Taxpayers with S Corporation income shall file an Annual Tax Return and attach a copy of their Federal Tax Form 1120S. There is no tax due on S Corporation Income at this time, however the filing of Federal or State tax forms is required for information purposes only. S Corporation losses cannot be used to offset earned income/compensation or net profits.

L. Remittances shall be made payable to the City of Bethlehem Tax Bureau.

M. Third party checks in payment of the tax due may be refused by the City of Bethlehem Tax Bureau.

N. Bad Checks - A \$25.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to appropriate authorities for possible criminal prosecution.

#### **Section 402. Declaration and Payment of Tax.**

A. Net Profits:

- (1) Every taxpayer making net profit(s) shall, on or before April 15, of the succeeding year, make and file with the Officer an annual tax return setting forth the amount of net profit(s) earned during the period beginning January 1, and ending December 31, of the Current Year, the amount of tax due thereon, the amount of tax paid thereon, the balance of tax due, and all supporting documentation required with the filing of an annual tax return. At the time of filing the annual tax return, the taxpayer shall make payment of the tax due as shown thereon or shall make demand for refund or credit in the case of overpayment.
- (2) Declarations of Estimated Net Profits and Estimated Quarterly Installments by taxpayers are encouraged and accepted by the City of Bethlehem Tax Bureau.

- (3) Every taxpayer is required to file an annual return, pursuant to SECTION 401, whether or not a declaration and/or quarterly installments have been filed and/or paid.

**B. Earned Income/Compensation Not Subject to Withholding:**

- (1) Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income/compensation not subject to the provisions relating to collection at the source, shall make and file with the Officer on an annual tax return setting forth the aggregate amount of earned income/ compensation not subject to withholding by him or her during the period beginning January 1, of the current year and ending December 31, of the current year, the amount of tax due thereon, the amount of tax paid thereon, the balance of tax due, and all supporting documentation required with the filing of an annual tax return. At the time of filing the annual tax return, the taxpayer shall make payment of the tax due as shown thereon or shall make demand for refund or credit in the case of overpayment.
- (2) Declarations of Estimated Earnings and Estimated Quarterly Installments by taxpayers are encouraged and accepted by the City of Bethlehem Tax Bureau.
- (3) Every taxpayer is required to file an annual return, pursuant to SECTION 401, whether or not a declaration and/or quarterly installments have been filed and/or paid.

**Section 403. Returns of Employers and Payments of Withheld Tax.**

A. Every employer required to withhold the tax shall file a quarterly return (Form 511) on the PROPER FORM setting forth the name, Social Security number, address, municipality of residence, gross earnings, and the amount of tax withheld for each employee, and shall remit the total sum thereof to the City of Bethlehem Tax Bureau at the following times:

For Quarter Comprising the Following Months in which Wages are paid:	Employer's Quarterly Return and Payment DUE on or BEFORE:
Jan, Feb, Mar	April 30
Apr, May, Jun	July 31
Jul, Aug, Sep	October 31
Oct, Nov, Dec	January 31

B. Employers may utilize computer printouts or similar listings to transmit quarterly and/or annual employee withholding data provided the required information is furnished in a manner acceptable to the City of Bethlehem Tax Bureau. By prior arrangement with the Income Tax Officer, employers with less than 250 employees may furnish quarterly and/or annual employee withholding data via magnetic media. In such cases an Employer's Quarterly Return "Header" shall be completed and attached as a cover sheet to transmit the data and withheld tax to the City of Bethlehem Tax Bureau quarterly. The annual employee withholding Form W-2 data shall be reported to the City of Bethlehem Tax Bureau during February of the Succeeding Year and shall be accompanied by the annual reconciliation Form 512.

C. Every employer with 250 or more employees shall be required to submit employee quarterly and annual withholding data via acceptable magnetic media. This reporting requirement shall

become effective with the Current Year beginning January 1, 2000. Such employers shall complete an Employer's Quarterly Return "Header" and attach it as a cover sheet to transmit the data and withheld tax to the City of Bethlehem Tax Bureau quarterly. The annual employee withholding Form W-2 data shall be reported to the City of Bethlehem Tax Bureau during February of the succeeding calendar year and shall be accompanied by the annual reconciliation Form 512.

D. The local earned income/compensation taxes withheld from an employee's wages by an employer or business entity or a corporation shall be held in "trust" for the taxing jurisdiction and the Income Tax Officer, even in the event of bankruptcy. These withheld tax funds shall not be considered to be part of the "property of the bankrupt estate." These withheld taxes shall not be commingled in the employer's general cash or other operating accounts.

1. **TRUSTEE EX MALEFICIO:** One who collects the earned income/compensation tax as an agent for the Taxing Jurisdiction or the Taxing Jurisdiction's tax administrator and fails to pay over such withheld taxes to the appointed collector for the Taxing Jurisdiction is a trustee ex maleficio.

EXAMPLE:

An officer of a company that fails to remit the earned income/compensation tax withheld from the company's employees may be held personally liable for the tax withheld as a trustee ex maleficio, where the officer has been active and/or in control over the collection and remittance of taxes.

2. Businesses and Corporations must act through individuals and where such individuals are the acting and controlling officers and agents of the corporation or business, and they fail to administer the trust responsibilities, liabilities are imposed upon the individuals who are responsible for the performance of the trust duty.

EXAMPLE:

A corporation which files an Employer's Quarterly Return of Tax Withheld From Employees, or the Forms W-2 documenting collections from employees, but does not remit the **TAX** withheld in full to the City of Bethlehem or to a Taxing District shall be liable for the withheld taxes as a trustee through wrong doing. The controlling corporate officer is also liable for the tax as a trustee through wrong doing, to the extent that this officer has failed, permitted and/or directed the corporation not to remit the withheld tax.

EXAMPLE:

An officer and/or director of a corporation or business who has knowledge that the corporation has failed to remit withheld earned income/compensation tax shall be personally liable for such tax withheld because that person did not try to prevent the corporation or business from spending its funds without first remitting the withheld tax to the City of Bethlehem or to a Taxing District.

3. **LIABILITIES OF CORPORATIONS AND OFFICERS:** Where a corporation does not remit the earned income/compensation tax withheld from its employees and is subsequently dissolved in bankruptcy, the corporate officers shall be held personally liable, jointly or severally, for the payment of the tax withheld.

EXAMPLE:

The officers are the sole owners of the shares of stock and/or are the “guiding force” of the corporation. The officers are trustees of the earned income/compensation tax collected since they are responsible for the corporation’s failure to remit the withheld taxes and the resulting misappropriation of the tax funds. The doctrine of separate entity of the corporation shall not defeat the City of Bethlehem’s or a Taxing District’s claims for tax withheld.

E. The employer, or the business, or the corporation shall not characterize the tax withheld from employees as simply creating a debtor-creditor relationship between the employer or business or corporation and the City of Bethlehem or a Taxing District. Therefore the employer is the conduit for the employees’ tax payments. Consequently, these taxes withheld are held in “express trust” or in “constructive trust” for the taxing authority and its collector of these taxes.

F. **LOWEST INTERMEDIATE BALANCE TEST (L.I.B.T.).** This is a judicial test which the Tax Bureau will apply to ease the burden of the beneficiary (the tax collector, in this case the City of Bethlehem Tax Bureau) to trace the funds if or when a trustee commingles trust funds due the City of Bethlehem or a Taxing District with other monies in a single account. The L.I.B.T. allows trust beneficiaries to assume that trust funds are withheld last from a commingled account. Therefore the lowest intermediate balance in a commingled account represents trust funds that have never been dissipated and which are reasonably identifiable. The City of Bethlehem Tax Bureau will take the position that the Court will keep in mind a broad policy against allowing a party to unilaterally make a trust unenforceable by commingling assets. Also, in the event of bankruptcy, filing the L.I.B.T. is intended to provide a method for the City of Bethlehem or a Taxing District to demonstrate that amounts of withheld taxes were/are still in the possession of the debtor at the commencement of the case.

G. **INTERLOCKING BUSINESS ENTITIES:** A company that maintains separate payrolls for its employees on a separate checking account or general ledger system and reported to this Tax Bureau that it has withheld payroll taxes from its employees shall be liable for the earned income/compensation tax, plus interest, plus penalties, plus all costs of collection when the tax has not been remitted to this Tax Bureau.

EXAMPLE:

The fact that a company is closely tied to a corporation and that together the company and the corporation provide a single overall set of services does not excuse the corporation from liability for unremitted earned income/compensation tax withheld where the entities have been kept separate for bookkeeping and operational purposes.

H. **RESPONSIBLE PARTY:** An officer or employee of a business entity, including a corporation, who is responsible or has the duty to collect or withhold the earned income/compensation tax and/or possesses actual or implied control over funds and tax accounts will be personally assessed for collected or withheld earned income/compensation tax that is not remitted to this Tax Bureau. Generally, the City of Bethlehem Tax Bureau will issue an assessment, or file a legal action, against the chief operating or financial officer and/or officers of any entity, including corporations, if the facts of the particular case disclose that these individuals are involved in the day to day operation of the business entity and retain decision making authority over financial matters. A responsible person need not be an officer of the entity. Managers whose duties include authority and control over financial decisions may likewise be held responsible.



This Tax Bureau's process of determining the responsible person begins with the "Employer Questionnaire" and/or the tax return itself. Bureau regulations do not restrict who may sign a tax return form. However, it is important for the person signing the Form 511 understands that act, along with other factors, may subject him or her to personal liability. Because signing the employer's Tax Return (Form 511) evidences control over the funds of the entity and an active involvement in the entity, this Tax Bureau presumes the person signing the tax return to be the person responsible for the payment of the withheld tax unless the facts of each particular case do not support that inference. Therefore, if the signatory is an officer of the entity, it is likely that an assessment will be made.

I. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the City of Bethlehem Tax Bureau, may be required by the Officer to file the return and pay the tax monthly. In such cases, payments of tax shall be made to the Officer on or before the last day of the month succeeding the month for which the tax was withheld.

J. On or before February 28, of the succeeding year, every employer shall file with the Officer:

- (1) An annual return (form 512) showing the employer's name, address and identification number, the total number of withholding statements transmitted with the annual return, the total income tax withheld from wages during the year as shown by withholding tax statements and the total income tax withheld as reported on the quarterly returns. Any differences between the total income tax withheld from wages as shown on the withholding statements and the total income tax withheld as reported on the quarterly returns must be fully explained in an attached note.
- (2) A withholding tax statement (form 525 or W2) for each employee employed during all or any part of the period beginning January 1, of the current year, and ending December 31, of the current year, setting forth the employee's name, address and Social Security number, the amount of earned income/compensation paid to the employee during said period, the amount of tax deducted, the political subdivision imposing the tax upon such employee, and the amount of tax paid to the Officer. Every employer shall furnish two copies of form 525 or at least four copies of form W2 to each employee for whom it is filed.

K. Every employer who discontinues business prior to the completion of taxable year, shall, within thirty (30) days after the discontinuance of business, file and furnish the returns required by this section covering the periods between the last such return and the discontinuance of business, and remit to the Officer all remaining tax due.

L. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the TAX or from complying with the requirements of the Ordinances or Resolutions relating to the filing of Declarations and Returns.

M. Bad Checks - A \$25.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to the appropriate authorities for possible criminal prosecution.

#### **Section 404. Fiscal Years.**

- A. Normally, taxpayers shall use the calendar year method for reporting and paying the tax.
- B. A taxpayer, by filing with the Officer his written election to do so, may make and file returns and pay tax on the same Fiscal Year basis used for Pennsylvania Personal Income Tax purposes. (See Section 401.E).

#### **Section 405. Cash or Accrual Basis.**

- A. A taxpayer may calculate income on the cash or accrual basis as those terms are used for Pennsylvania Personal Income Tax purposes. The basis used by the taxpayer shall be the same as used by the taxpayer for the Pennsylvania Personal Income Tax.
- B. Illustrations of Computations of Net Profits - As amplification of the definition contained in Section 405 A, but not a limitation thereof, the following information and requirements for the determination of net business profits are furnished:

- (1) "Cash Basis" Method - A taxpayer employing the cash basis of accounting includes in gross income all income subject to tax received during the year in cash or its equivalent. He or she deducts all disbursements made during the year in cash or its equivalent, provided deduction for such expenditures is authorized by law.
- (2) The use of the "Cash Basis" is mandatory where no books or records of account are maintained.
- (3) Items of income and expenditure which, as gross income and deduction, are elements in computing taxable income need not necessarily be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money.

##### **EXAMPLE:**

A taxpayer on the "Cash Basis" received shares of stock in payment of services. Assuming that the stock has a fair market value, the taxpayer has received the equivalent of cash to the extent of its value and that amount must be included as income.

- (4) If a return is made on the "Cash Basis", gross profit shall include receipts from commissions, fees and interest, as well as the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services.
- (5) "Accrual Basis" - If income is taken into consideration when earned, even though not received in cash, and expenses are considered as soon as incurred, whether paid or not, the system of accounting is said to be on the "Accrual Basis". These are the basic rules: (a) the right to receive an item of income (as distinguished from actual receipt) determines its inclusion in gross income under the "Accrual Basis"; and (b) a deduction cannot be accrued until an actual liability is incurred.

**EXAMPLE:**

In September of last year a contractor performed work for a customer. Payment for this work was not received until this year. If the taxpayer reports on the "Accrual Basis", the income will be included in last year's return (when earned). If the taxpayer reports on the "Cash Basis", the payment will be included in this year's return (when received).

C. A taxpayer engaged in more than one business activity may, in computing taxable income, use a different method for each trade or business activity.

D. Methods of accounting must clearly reflect income. No method of accounting is allowed unless it clearly reflects income. Thus, even if the taxpayer's accounts are kept and the return made on the "Cash Basis", unusual cases may arise in which a payment made during the year is not deductible.

**EXAMPLE:**

Commissions, fees and costs paid in one year by a taxpayer in securing a loan for ten or fifteen years covered by a mortgage on property to be leased are not deductible in full in the year of payment but should be spread over the period of the loan, even though the taxpayer's accounts are kept and the return made on the "Cash Basis."

E. Income or net profits shall be taxable in the year when they are actually or constructively received by the taxpayer. Income or net profits, although not actually reduced to a taxpayer's possession, will be deemed to be constructively received by the taxpayer in the tax year during which it is credited to the taxpayer's account, set apart for the taxpayer, or otherwise made available so that the taxpayer may draw upon it at anytime. However, income will not be deemed to be constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions, such as those relating to age, death, disability, retirement or other similar factors.

**Section 406. Penalty, Interest and Late Filing Fee.**

If for any reason the tax is not paid when due, interest at the rate of six percent (.06) per annum on the amount of said tax, and an additional penalty of one-half of one percent (.005) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit shall be brought for recovery of any such tax, the person liable therefore shall, in addition, be liable for the cost of collection and the interest and penalty herein imposed.

If a taxpayer fails to file a valid Annual Return (see Section 509) on or before April 15th, of the succeeding year, or on or before the date to which an extension has been granted pursuant to Section 407, the taxpayer shall at all times remain responsible for the filing of a valid Annual Return and shall be liable for a ten dollar (\$10.00) late filing fee pursuant to Section 509. This late filing fee shall be paid by the taxpayer in addition to any tax balance due, including any fines, penalties and interest, and shall be paid whether or not all earned income/compensation tax may have been withheld by his or her employer and whether or not there is any tax balance due.

An additional penalty of twenty-five percent (25%) of the unpaid tax will be assessed in the following situations:

- 1) When a taxpayer, who is not subject to withholding provisions of the Ordinances and Resolutions because he or she is employed in an area that does not require withholding of the earned income/compensation tax, fails to make estimated quarterly tax installments and then fails to pay the balance of tax due on or before April 15<sup>th</sup> of the succeeding year.

- 2) When a taxpayer, who is self-employed, fails to make estimated quarterly tax installments and then fails to pay the balance of tax due on or before April 15<sup>th</sup> of the succeeding year.
- 3) When an employer withholds the earned income/compensation tax from his or her employees and fails to remit the withheld tax to the City of Bethlehem Tax Bureau on or before the due date for such quarterly employer remittances

Abatement of certain interest and penalty will be considered under the following conditions:

- A. Errors and delays – In the case of any underpayment, the Tax Bureau may abate all or any part of interest for any period for the following:
  - (1) Any underpayment of tax finally determined to be due attributable in whole or in part to any error or delay by the Tax Bureau in the performance of a ministerial act. For the purposes of this paragraph, an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer and after the Tax Bureau has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.
  - (2) Any payment of a tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the Tax Bureau being erroneous or dilatory in the performance of a ministerial act. The Tax Bureau shall determine what constitutes timely performance of ministerial acts performed under this subsection.
  - (3) The timely performance of ministerial acts shall mean that the Tax Bureau shall contact the taxpayer or employer within 60 days of receiving a properly filed tax return. If the Tax Bureau fails to notify the taxpayer or employer of an underpayment of tax within 60 days of the receipt of a properly filed return, that taxpayer or employer shall be given 30 days to satisfy the underpayment without the accrual of penalty and interest. If that taxpayer or employer fails to satisfy the underpayment within 30 days penalty and interest shall be applied from the date the tax was originally due.
  - (4) A “properly filed return” shall be defined as a return that has been prepared in accordance with these Rules and Regulations and contains all supporting documents, forms, schedules, etc.
- B. Abatement due to erroneous written advice by the Tax Bureau:
  - (1) The Tax Bureau shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by and officer, employee or agent of the Tax Bureau acting in the officer’s, employee’s or agent’s official capacity if:
    - (i) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(ii) The portion of the penalty or addition to tax or excess interest did not result from the failure by the taxpayer to provide adequate or accurate information.

(2) This subsection shall not be construed to require the Tax Bureau to provide written advice to the taxpayer.

#### **Section 407. Extensions.**

A taxpayer who requires an extension of time in which to file his or her Annual Tax Return shall make written application to the City of Bethlehem Tax Bureau no later than one hundred and five (105) days from the end of the Current Year or fiscal year for which the Return will be filed. A taxpayer who is granted an extension of time for filing his or her Federal or Pennsylvania Income Tax Return shall not automatically be entitled to a similar extension of time for filing his or her local income tax return. A copy of the taxpayer's Federal or Pennsylvania tax extension form must be received by the City of Bethlehem Tax Bureau on or before April 15, of the succeeding year, for the extension to be approved. Such approved extension shall be valid through August 15, of the succeeding year.

Any taxpayer who, after receiving an approved extension to August 15, of the succeeding year, finds that he or she needs additional time for proper completion of the Annual Tax Return, shall make written application to the City of Bethlehem Tax Bureau on or before August 15, of the succeeding year, requesting an additional extension of time to file. Such approved second extension shall be valid through October 15, of the succeeding year and will only be approved if a first extension was filed and approved on or before April 15, of the succeeding year. Under no circumstances will extensions be approved after October 15, of the succeeding year.

Interest and penalty, as outlined in Section 406, will be added and collected on tax not received by its due date, even though an extension of time for filing has been granted.

#### **Section 408. Change in Pennsylvania Taxable Income.**

If the amount of a taxpayer's earned income/compensation or net profits reported on his or her annual Federal or Pennsylvania Income Tax Return is changed or corrected either by action of the Internal Revenue Service or Pennsylvania Department of Revenue or by the individual's filing of an amended annual Federal or Pennsylvania Return, the taxpayer shall report to the City of Bethlehem Tax Bureau such change or correction within thirty (30) days after the date when the change or correction was determined, by filing an amended tax return indicating the applicable tax year on the return.

### **ARTICLE V ADMINISTRATION AND ENFORCEMENT**

#### **Section 501. Income Tax Officer.**

A. The Officer is charged with the administration and enforcement of the Ordinances and Resolutions and these Rules and Regulations, and is authorized to act on behalf of the City of Bethlehem or a Taxing District in such administrative and enforcement matters.

B. The City of Bethlehem Tax Bureau shall keep a record showing the amount received by it from each person paying the TAX and, if paid by such person on behalf of another person, the name of such other person, and the date of receipt, for seven (7) years.

C. The City of Bethlehem Tax Bureau has prepared a “DISCLOSURE STATEMENT” which sets forth the following in simple and non-technical terms:

- (1) The rights of a taxpayer and the obligation of the local taxing authority during an audit or administrative review of the taxpayer’s books and records.
- (2) The administrative and judicial procedures by which a taxpayer may appeal or seek review of any adverse decision of the local taxing authority.
- (3) The procedure for filing and processing refund claims and taxpayer complaints.
- (4) The enforcement procedures.

**Section 502. Administrative Appeals.**

A. The City of Bethlehem Tax Bureau encourages any taxpayer or employer desiring a specific ruling concerning the Ordinances, Resolutions or these Rules and Regulations to submit all pertinent facts in writing to the Officer who shall issue a written ruling.

B. The City of Bethlehem Tax Bureau has established an administrative process to receive and make determinations on petitions from taxpayers relating to the assessment, determination and refund of eligible taxes as required by ACT 50 of 1998. A hearing officer shall rule on all petitions submitted based on the regulations set forth governing the practice and procedures of the Administrative Appeal Process.

C. Any taxpayer who is aggrieved by an assessment or determination or delinquency of any of the eligible taxes would have 90 days from the date of the assessment or determination notice to file a petition for reassessment or re-determination with the hearing officer.

D. The petition shall be double spaced, typed or legibly handwritten on plain paper. The petition should contain a brief summary of the action and the “legal basis” that precipitated the filing for reassessment or re-determination, along with any pertinent information (copies of tax returns, supporting information, tax schedules, expense records, etc.)

E. The petition shall be mailed via First Class Mail, or delivered in person to the hearing officer c/o the City of Bethlehem Tax Bureau. Hand delivered petitions will be receipted by the Tax Bureau and will be considered filed as of the date receipted. Petitions received by mail will be considered filed as of the United States Postal Service postmark stamped on the envelope.

F. Petitions will be photocopied by the Tax Bureau and immediately forwarded to the hearing officer. Within 10 days of the petition filing date, the Tax Bureau will submit its position and all relevant facts pertaining to the action that precipitated the petition to the hearing officer.

G. Within 60 days of the petition’s filing date, a “Final Decision” must be issued by the hearing officer. Failure to issue a “Final Decision” within 60 days will result in the petition being deemed approved.

H. Any person aggrieved by a decision of the hearing officer, who has a direct interest in the decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals.

I. Decisions under this SECTION 502 may be made according to the principles of law and equity.

**Section 503. Examination of Books and Records of Taxpayers and Employers.**

A. The Officer and agents or staff members of the City of Bethlehem Tax Bureau designated in writing by him are authorized to examine the books, papers and records of any taxpayer or supposed taxpayer of any employer or supposed employer in order to verify the accuracy of any return; or, if no return was filed, to ascertain the tax due, if any. Every taxpayer or supposed taxpayer and every employer or supposed employer is required to give the Officer or any agent or staff member so designated by him, the means, facilities and opportunity for such examination and investigations as are authorized. In addition to all other powers, the Officer and agents or staff members of the City of Bethlehem Tax Bureau shall have the power, on behalf of the taxing jurisdiction to examine any person under oath concerning salaries, wages, commissions, and other compensation listed on the annual tax return, or which should have been listed on the annual tax return for taxation hereunder; to compel the production of books, papers and records, and the attendance of persons (whether as parties, principals, agents or witnesses) before him.

Pursuant to the foregoing, the Officer and agents or staff members of the City of Bethlehem Tax Bureau are authorized to require the production of federal and/or state tax returns for purposes of determining the accuracy of a taxpayer's local tax return and/or of assessing the earned income/compensation and net profits tax.

B. Minimum time period for taxpayer response to requests for information shall be 30 days from the mailing of the audit notice. The Tax Bureau shall grant reasonable extensions upon application for good cause and shall notify the taxpayer of the procedure to obtain an extension in its initial request for information.

An initial inquiry by the Tax Bureau regarding a taxpayer's compliance with any eligible tax may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice.

The Tax Bureau may make a subsequent request for a tax return or supporting information if, after the initial request, the Bureau determines that the taxpayer has failed to file a tax return, underreported income or failed to pay a tax for one or more of the tax periods covered by the initial request. Note that this requirement shall not apply if the Bureau has sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax which was due more than three years prior to the date of the notice.

C. Any information gained by the Tax Bureau as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for the Tax Bureau to:

- (1) Divulge or make known in any manner confidential information gained in any return investigation, hearing or verification to any person.
- (2) Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person.
- (3) Print, publish or make known in any manner any confidential tax information.

#### **Section 504. Records to be Kept by Taxpayers.**

Taxpayers and employers subject to the Ordinances or Resolutions are required to keep such records as will enable the filing of true and accurate returns, whether taxes are withheld at the source of earned income/compensation or of taxes payable upon earned income/compensation or net profits, or both; and such records shall be preserved for a period of not less than six (6) years in order to enable the City of Bethlehem Tax Bureau to verify the correctness and accuracy of the returns filed.

#### **Section 505. Refunds and Credits.**

A valid Annual Tax Return must be filed before a request for a refund or credit can be considered. Depending on the nature of the refund or credit, additional documentation to substantiate the request may be required by the City of Bethlehem Tax Bureau. Refund and credit requests will not be processed until the necessary documentation is provided. Requests for refunds and credits will be considered based upon the relevant facts and circumstances pertinent to each case. Unsupported or unexplained expense amounts will be denied and removed from the tax calculations. Amounts less than one dollar (\$1.00) will be refunded only upon written request of the taxpayer, addressed to the Officer, and accompanied by a stamped, self-addressed envelope. Credits of less than one dollar (\$1.00) will be extended only upon written request of the taxpayer, addressed to the Officer, and accompanied by a stamped, self-addressed envelope.

- A. A taxpayer who has paid an eligible tax to the Tax Bureau may file a written request with the Bureau for a refund or credit of the eligible tax. A request for refund shall be made within three years of the due date for filing the report as extended or one year after the actual payment of the tax, whichever is later. If no report is required, the request shall be made within three years after the due date for the eligible tax or within one year after actual overpayment of the eligible tax, whichever is later.
  - (1) For purposes of this section, a tax return filed by the taxpayer with the Tax Bureau showing an overpayment of tax shall be deemed to be a written request for a cash refund unless otherwise indicated on the return.
  - (2) A request for refund under this subsection shall not be considered a petition under SECTION 502 of these Rules and Regulations and shall not preclude a taxpayer from submitting a petition under SECTION 502 of these Rules and Regulations.
  - (3) For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed with the Tax Bureau within one year of the payment.
- B. All overpayments of tax due a local taxing authority shall bear simple interest from the date of overpayment until the date of resolution.

Interest on overpayments shall be allowed and paid at the same rate the Commonwealth is required to pay pursuant to 72 P.S. Section 806.1. Exceptions are as follows:

- (1) No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due the Tax Bureau within 75 days after the last date prescribed for filing the report of tax liability or within 75 days after the date the tax return is filed or the report of liability is filed, whichever is later.



- (2) Overpayments of interest and penalty shall not bear any interest
- C. The taxpayer's acceptance of the Bureau's check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Tax Bureau shall be deemed to be acceptance of the check by the taxpayer for the purposes of this SECTION.
- D. As used in this SECTION 505 of these Rules and Regulations, the following words and phrases shall have the meanings given to them in this Subsection D.

"Date of overpayment" – The later of the date paid or the date tax is deemed to be overpaid as follows:

- (1) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing.
- (2) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.
- (3) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.
- (4) Any amount claimed to be overpaid with respect to which lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid 60 days following the initiation of the review or procedure.
- (5) Any amount shown not to be due on an amended income or earned income/compensation and net profits tax return shall be deemed to have been overpaid 60 days following the date of the filing of the amended income tax return.

"Date of resolution" – The date the overpayment is refunded or credited as follows:

- (1) For a cash refund, a date preceding the date of the Tax Bureau's refund check by not more than 30 days.
- (2) For a credit for an overpayment:
  - (a) The date of the Tax Bureau's notice to the taxpayer of the determination of the credit; or
  - (b) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date 90 days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

#### **Section 506. Fines and Penalties for Violations.**

Any person who violates any provision of the Ordinances or Resolutions shall upon conviction, be sentenced to pay a fine of not more than \$500.00 for each offense plus costs, and in default of payment thereof, to be imprisoned in the County Prison for a period not exceeding thirty (30) days. Some of the violations which may result in such conviction are:

- A. Failure, neglect, or refusal on the part of any person, to make and file any declaration or return required by the Ordinances or Resolutions.
- B. Failure, neglect, or refusal of any employer, required to withhold the tax under Article III of these Rules and Regulations, to register with the City of Bethlehem Tax Bureau.
- C. Failure, neglect, or refusal of any employer to deduct or withhold the tax from his or her employees.
- D. Failure, neglect, or refusal to maintain or to reveal to the City of Bethlehem Tax Bureau or its authorized representative, by any person, any partner of a partnership, or any officer of a corporation or association, books, records, papers (including Federal or State tax forms) relevant to the tax imposed hereunder.
- E. Knowingly making any incomplete, false or fraudulent report or return or attempting to do any other thing to avoid full disclosure of net profits or earned income/compensation in order to avoid the payment of the whole or any part of the tax imposed by the Ordinances or Resolutions.

#### **Section 507. Concurrent Remedies.**

Imposition of any fine or imprisonment shall not bar either civil liability for tax, penalty or interest or late filing fee or prosecution for embezzlement, fraudulent conversion, theft, or other offense under the Pennsylvania Crimes Code, or failure to file a properly prepared tax return under Act 511.

#### **Section 508. Failure to Receive Forms.**

Failure of a taxpayer or employer to receive forms or returns required by the Ordinances or Resolutions does not excuse any failure to file any reports or returns required or to pay any tax due.

#### **Section 509. Return Completion – General.**

- A. Each taxpayer shall account for all twelve (12) months of the calendar year as to their place of domicile and, in the case of more than one place of domicile, the months in each place of domicile; and also provide the name of each Borough, Township, or City in which they were domiciled during the year.
- B. Figures are not to be rounded off. Actual figures are to be used.
- C. All appropriate schedules (State tax forms and schedules, as well as taxpayer prepared worksheets referenced on State tax forms and schedules and Federal Tax Forms and Schedules when referenced by the Pa. State Form and/or Schedule), W2 forms, and 1099 forms shall be filed with the annual tax return. Annual tax returns received without the appropriate schedules, W2 forms, or 1099 forms shall be considered incomplete and are not a valid filing of the annual return.

D. Taxpayers with earnings in another State who have paid tax on those earnings to the other State, and are applying for credit for tax paid to the other State, must provide a copy of the State tax return for that State, plus their Pennsylvania Personal Income Tax Return. If the aforementioned State tax returns are not provided with the annual tax return, it will be considered as being incomplete and not a valid filing of the annual tax return.

E. Estimates of income and or expenses by the taxpayer are not acceptable unless approved by the City of Bethlehem Tax Bureau.

F. Should the taxpayer omit the required expense deduction forms or if the expense deduction forms are not fully completed, the expense deductions shall be disallowed and systematically denied without notification to the taxpayer. In the case where the omission of the required expense deduction forms and the subsequent denial of the expense deduction results in a balance of tax due, the taxpayer will be notified of the balance due.

G. Taxpayers may not submit Federal Forms and Schedules in lieu of Pennsylvania Schedules C, E, F, G, I, UE, RK-1, and NRK-1 to the Tax Bureau.

H. Taxpayers may not submit Schedule E in lieu of submitting their applicable K-1 form. Failure to submit the completed K-1 form shall result in the rejection and return of the taxpayer's forms as an incomplete or fraudulent filing.

I. Annual tax returns received by the City of Bethlehem Tax Bureau that are not signed and dated by the taxpayer filing the annual tax return will be considered as an incomplete and invalid filing of the annual tax return.

J. Where no annual tax return is filed on or before the date due for the filing of the return, the taxpayer shall be liable for a ten dollar (\$10.00) late filing fee. Where an annual tax return is filed on or before the date due, but is considered as an incomplete and invalid filing because of the failure of a taxpayer to comply with the requirements of this Section 509, and the taxpayer fails to amend or otherwise complete the return so as to comply with this Section 509 on or before the date due for the filing of the return, the City of Bethlehem Tax Bureau shall give the taxpayer written notice by United States certified mail of the reasons why the return is considered incomplete and invalid. The notice shall inform the taxpayer that he or she shall have fifteen (15) days from the date the notice is postmarked within which to amend or otherwise complete the return so as to comply with this Section 509, and file it with the City of Bethlehem Tax Bureau. If the taxpayer fails to amend or otherwise complete the return within said fifteen (15) day period, the taxpayer shall be liable for the ten dollar (\$10.00) late filing fee. The late filing fee shall be paid by the taxpayer in addition to any tax balance due, including any fines, penalties, interest, and postage expenses shall be paid whether or not all earned income/compensation tax may have been withheld by his or her employer and whether or not there is any tax balance due. It is the responsibility of each taxpayer to carefully review his or her return for compliance with this Section 509 before filing.

The volume of returns filed with the City of Bethlehem Tax Bureau prevents it from reviewing all returns for completeness within such time as will permit it to communicate with individual taxpayers that a return is incomplete before date on which the return is due. The late filing fee shall be paid to the City of Bethlehem Tax Bureau notwithstanding claims that the incomplete return was filed sufficiently in advance of the due date such that the taxpayer should or could have been notified that the return was incomplete for the purpose of amending or completing the return on or before the due date.

In the case where a taxpayer remits a voluntary payment towards tax liability, unless specified by the taxpayer otherwise, the payment shall be prioritized as follows:

- (1) Tax
- (2) Interest
- (3) Penalty
- (4) Any other fees or charges

In the case where a taxpayer remits a payment towards the tax due as calculated on the annual tax return and that annual tax return is found to be incomplete or not a valid filing of the annual tax return, as outlined above, the payment will be deposited towards the taxpayer's liability as an estimated tax payment to be reconciled upon the receipt of a complete and valid filing of the annual tax return by the aforementioned taxpayer.

The City of Bethlehem Tax Bureau may acquire Pennsylvania Department of Revenue Individual Income Tax information regarding earned income/compensation and net profits for audit and compliance purposes.

K. The Tax Bureau shall notify the taxpayer in writing of the basis for any underpayment that the Bureau has determined to exist. The notification shall include:

- (1) The tax period or periods for which the underpayment is asserted.
- (2) The amount of underpayment detailed by tax period.
- (3) The legal basis upon which the Tax Bureau has relied to determine that an underpayment exists.
- (4) An itemization of the revisions made by the Tax Bureau to a return or report filed by the taxpayer that results in the determination that an underpayment exists.

#### **Section 510. Who Must File.**

A. Every person who was:

- (1) a resident of the City of Bethlehem who was employed or engaged in the operation of a business, profession, or other activity for income or profit; or
- (2) a non-resident of the City of Bethlehem who was employed in the City of Bethlehem or engaged in the operation of a business, profession, or other activity for income or profit in the City of Bethlehem for all or any part of the preceding calendar year;

shall file with the City of Bethlehem Tax Bureau an annual tax return showing all earned income/compensation and net profits received and/or earned for the previous year.

B. Partial year residents are required to file an annual tax return for the applicable portion of the calendar year they resided in City of Bethlehem.

C. Taxpayers must file an annual tax return even though they may have had earned income/compensation tax withheld by an employer.

D. Taxpayers who are on active military duty must file an annual tax return for the year in which they first entered the military on active duty and inform the City of Bethlehem Tax Bureau of their active duty military status. Upon completion of active duty military status, taxpayers shall resume filing annual tax returns.

E. Taxpayers who are retired or permanently disabled and have no taxable earned income/compensation or net profits may be coded on the City of Bethlehem Tax Bureau's files so as not to receive an annual tax form. The taxpayer must notify the City of Bethlehem Tax Bureau in writing and must also provide the effective date of retirement or permanent disability.

F. Approximately every three to five years, the City of Bethlehem Tax Bureau will send annual tax forms to all residents for the purpose of updating and verifying taxpayer files.

#### **Section 511. Registration of Taxpayers.**

Every taxpayer who receives, or anticipates that he or she will receive, taxable earned income/compensation or net profits during the calendar year must register his or her name and resident address, his or her social security number and the name and address of his or her place of employment or business with the City of Bethlehem Tax Bureau. All taxpayers will thereafter be responsible for reporting changes in their name, place of residence or place of employment or business with the City of Bethlehem Tax Bureau.

#### **Section 512. Installment Plans for Delinquent Amounts.**

The Tax Bureau may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for any eligible tax in installment payments if the Tax Bureau determines that the agreement will facilitate collection. The following terms and conditions shall apply to installment plans:

- A. The taxpayer must file an annual tax return for the current tax year and any delinquent tax years to be covered under the installment plan. These annual tax returns must include a copy of the taxpayer's Federal Tax Return and/or a Pennsylvania Personal Income Tax Return and all supporting documentation as verification that all taxable income has been reported. In cases where a Federal or State Tax Return cannot be produced, the taxpayer must complete a Federal Form 4506 "Request for Copies Of Tax Return" naming the City of Bethlehem Tax Bureau as recipient of the requested copy. The costs to procure the Federal or State Tax Return and related information are the sole responsibility of the taxpayer.
- B. Installment plans will not be approved for tax amounts less than \$ 100.00.
- C. Installment Plans will not be approved for more than 4 months. Payment amounts will be calculated by dividing the total tax liability by 4 and adding the applicable penalty, interest, fines, and costs to each payment.
- D. Taxpayers will be required to verify that their current year's tax liability has been satisfied to date either by proof of employer withholding or by direct payment from the taxpayer.

- E. Installment Plans will be granted only 1 time to any taxpayer.
- F. Installment Plans will be revoked and immediate civil action or garnishment of wages for collection of the tax due will be initiated if any of the aforementioned terms and conditions are not met.
- G. The Tax Bureau may terminate any prior agreement if:
  - (1) The information the taxpayer provided to the Tax Bureau prior to the date of the agreement was inaccurate or incomplete, or
  - (2) If the Tax Bureau believes that collection of any eligible tax under the Installment Plan is in jeopardy.
- H. If the Tax Bureau finds that the financial condition of the taxpayer has significantly changed, the Tax Bureau may alter, modify or terminate the agreement, but only if:
  - (1) Notice of the Tax Bureau's finding is provided to the taxpayer no later than 30 days prior to the date of such action; and
  - (2) The notice contains the reasons why the Tax Bureau believes a change has occurred.
- I. The Tax Bureau may alter, modify or terminate an Installment Plan agreement if the taxpayer fails to do any of the following:
  - (1) Pay any installment at the time the installment is due.
  - (2) Pay any other tax liability at the time the liability is due.
  - (3) Provide a financial condition update as requested by the taxpayer.
- J. Nothing in this subsection shall prevent a taxpayer from prepaying in whole or in part any eligible tax under any installment agreement with the Tax Bureau.
- K. If a taxpayer fails to complete a tax installment agreement, a twenty-five percent penalty will be calculated on the unpaid tax balance and added to total amount due.

**Section 513. Suit for Collection of Delinquent Amounts.**

A. The Officer may sue in the name of the City of Bethlehem Taxing District for the recovery of taxes, penalties, interest, and late filing fees due and unpaid under the Ordinances or Resolutions.

B. Any suit brought to recover the tax, penalty, interest, and late filing fees imposed by the Ordinances or Resolutions shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later; provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

- (1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him or her under provisions of the Ordinances or Resolutions, there shall be no limitation.
- (2) Where an examination of the declaration or return filed by any person, or of any other evidence relating to such declaration or return in the possession of the Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.
- (3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.
- (4) Where any person has deducted taxes under the provisions of the Ordinances or Resolutions, and has failed to pay the amounts so deducted to the Officer, or where any person has willfully failed or omitted to make the deductions required by the Ordinances or Resolutions, there shall be no limitation.
- (5) This section shall not be construed to limit the City of Bethlehem Tax Bureau from recovering delinquent taxes by any other means provided by Act 511.

C. The Officer may sue for recovery of an erroneous refund or credit provided such suit is begun two years after making such refund or credit, except that such suit may be brought within five years if it appears that any part of the refund or credit was induced by fraud or misrepresentation of material fact.

#### **Section 514. Wage Attachments.**

The City of Bethlehem Tax Bureau shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms, or individuals, employing persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes, upon the presentation of a written notice and demand certifying that the information contained therein is true and correct and containing the name of the taxable party or the spouse thereof, and the amount of tax due. Upon presentation of such written notice and demand, it shall be the duty of any such corporation, political subdivision, association, company, firm or individual to deduct from the wages, commissions, or earnings of such individual employees, then owing or that shall within sixty (60) days thereafter become due or from any unpaid commissions or earnings of any such taxable in its or his or her possession, or that shall within sixty (60) days thereafter come into its or his or her possession, a sum sufficient to pay the respective amount of the delinquent earned income/compensation taxes, penalties, interest, late filing fees, and costs, shown upon written notice or demand, and to pay the same to the City of Bethlehem Tax Bureau sixty (60) days after such notice shall have been given. No more than ten percent of the wages, commissions or earnings of the delinquent taxpayer or spouse thereof may be deducted at any one time for delinquent earned income/compensation taxes, penalties, interest and late filing fees and costs. Such corporation, political subdivision, association, firm or individual shall be entitled to deduct from the moneys collected from each employee the costs incurred from the extra bookkeeping necessary to record such transactions, not exceeding two percent of the amount of money so collected and paid over to the City of Bethlehem Tax Bureau. Upon the failure of any such corporation, political subdivision, association, company, firm, or individual to deduct the amount of such taxes, penalties, interest, late filing fees, and costs or to pay the same over to the tax collector, less the cost of bookkeeping involved in such transaction, as herein provided, within the time required, such corporation, political subdivision, association, company, firm or individual shall forfeit and

pay the amount of such tax, penalty, interest, late filing fee, and costs for each such taxable whose taxes, penalties, interest, late filing fees and costs are not withheld and paid over, or that are withheld and not paid over together with a penalty of ten percent added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the City of Bethlehem Tax Bureau, or by the proper authorities of the taxing district, as debts of like amount are now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law.

The City of Bethlehem Tax Bureau shall not proceed against a spouse or his or her employer until he has pursued collection remedies against the delinquent taxpayer and his or her employer under this section.

Upon presentation of a written notice and demand under oath or affirmation, to the State Treasurer or any other fiscal officer of the state, or its boards, authorities, agencies or commissions, it shall be the duty of the treasurer or officer to deduct from the wages then owing, or that shall within sixty days thereafter become due to any employee, a sum sufficient to pay the respective amount of the delinquent earned income/ compensation tax, penalty, interest, late filing fee, and costs shown on the written notice. The same shall be paid to the City of Bethlehem Tax Bureau which said delinquent tax, penalty, interest, late filing fee was levied within sixty (60) days after such notice shall have been given.

The City of Bethlehem Tax Bureau shall, at least fifteen (15) days prior to the presentation of a written notice and demand to the State Treasurer or other fiscal officer of the State, or to any corporation, political subdivision, association, company or individual, notify the taxpayer owing the delinquent tax, penalty, interest, late filing fee, and costs by registered or certified mail that a written notice and demand shall be presented to his or her employer unless such tax, penalty, interest, late filing fee and costs are paid. The return receipt card for certified or registered mail shall be marked delivered to addressee only, and the cost of notification by certified or registered mail shall be added to the costs for collecting taxes, penalties, interest, and late filing fees.

#### **Section 515. Bad Checks.**

When any person shall give or cause to be given to this bureau a check in payment of any obligation whether due to the bureau or others, including but not limited to any tax, which is dishonored or unpaid by the bank upon which it is drawn, the sum of twenty (\$20) dollars shall be added to the obligation and interest and penalty provided by law or otherwise, to cover the additional cost to the bureau, plus the issuer/maker may have a criminal complaint court action filed against him or her.

#### **Section 516. Changes in the Language of Act 511 by the Pennsylvania General Assembly.**

Should the Pennsylvania General Assembly amend Act 511 language, the amended language shall be incorporated into these Rules and Regulations.

#### **Section 517. Assessment and Collection of Underpayment of the Tax.**

A. If as a result of research or investigation conducted by or on behalf of the Officer of the Bureau, a declaration or return is found or is reasonably believed to be incorrect, the Officer is authorized to assess and collect any underpayments of taxes withheld at the source, or any underpayments of **TAXES** withheld at the source, or any underpayments of **TAX** owed by any taxpayer with respect to earnings or net profits or both. If no declaration or return has been filed and a **TAX** is found or determined to be due, the **TAX** actually due may be assessed and collected with or without the formality of obtaining a delinquent declaration or return from the taxpayer.



B. Taxpayer Appeals: Any person aggrieved by an assessment made by the Officer may, within ninety (90) days after receipt of notice of the assessment, appeal the assessment by following the Appeal procedures as outlined in SECTION 502. ADMINISTRATIVE APPEALS.

**Section 518. “Paid Under Protest”.**

A check endorsement shall not qualify as a refund claim. The words “Paid Under Protest” handwritten, typed or otherwise placed on a taxpayer’s check or money order, or the check or money order of an employer, shall not qualify as a refund claim as the words are not sufficient to notify the Bureau’s personnel of the taxpayer’s intent to seek a refund or of the substance of their claim, or of facts sufficient to permit the Bureau to undertake an investigation of the taxpayer’s claim.

**Section 519. Delinquent Tax Collection Postage Expense.**

- A. The first letter will be mailed by first class postage at the prevailing postage rate.
- B. The second letter, if required, will be mailed by certified mail, with return receipt at the prevailing postage rate. The second letter will also contain a “postage expense” amount which is to be included in the total amount due indicated on the second letter to the taxpayer.
- C. The postage amount will change if the postal rate fee for these services is changed.
- D. If a wage attachment is subsequently prepared, the postage expense will become a part of and shall be included in the \$40.00 wage attachment amount when the wage attachment is prepared and mailed to the employer.

**Section 520. Indebtedness and Priority Claims.**

In bankruptcy cases, the Priority Claim due to, or held by this Bureau shall survive the confirmation of any bankruptcy claim and shall not be subject to discharge of debt to the extent that such claims are not paid by the bankruptcy plan of the debtor.

Amounts owing or which shall be determined to be due this Bureau shall be the amount of the Priority Claim due to this Bureau when a bankruptcy plan is filed with the Bankruptcy Court.

**Section 521. Procedure When Taxation Is Not Defined in Rules and Regulations.**

In cases where a question arises as to the taxation of earned income/compensation or net profits not specified in these rules and regulations, then the regulations promulgated by the Pennsylvania Department of Revenue for the personal income tax shall apply, so long as they are not contrary to the provisions of the Local Tax Enabling Act of 1965, as amended by Act 166 of December, 2002.

**Section 522. Rule on Apportioning Income on Professional Athletes.**

Apportioning the income **is required by** a non-resident who receives earned income/compensation/compensation for services rendered within the geographic boundary of a member taxing authority which levies a non-resident tax, as a member of a professional athletic team, or as an individual professional athlete. This rule shall not apply to athletes domiciled within any states which have reciprocity agreements with the Commonwealth of Pennsylvania.

Generally, a non-resident professional athlete's income will be apportioned to this bureau's applicable member taxing authority on the basis of a fraction, the numerator of which is the number of duty days spent within the member taxing authority rendering services to the team, or as an individual, and the denominator of which is the total number of duty days spent both within and outside the member taxing authority during the tax year. An alternative method may be prescribed by this bureau or proposed by the athlete if the above method does not fairly and equitably apportion the compensation.

**Duty days defined:** Duty days generally mean all days during the tax year.

- (a) From the beginning of official preseason training through the last scheduled or actually played game or event and
- (b) Other days, not in the period, during which the athlete renders a service for the team. Rendering a service includes conducting training and rehabilitation activities at the team's facilities.
- (c) Duty days include:
  - Game days;
  - Practice days;
  - Days spent at team meetings, promotional caravans, and preseason training camps;
  - Days spent participating in instructional leagues and at special games such as all-star games; and
  - Days served with the team through all post-season games in which the team completes or is scheduled to compete.

Duty days do not include days for which an athlete is suspended without pay or prohibited from performing services for the team. For athletes who switch teams during the tax year, a separate duty day calculation, representing the number of duty days spent with each team, must be made. Duty days are included in the apportionment formula for the tax year in which they occur.

Disability and travel days: Days that an athlete is on a disabled list, and does not engage in rehabilitation at the team's facility or is not otherwise rendering services for the team within a member taxing authority, are not considered duty days spent within the taxing authority, but they are included in the total duty days spent within and outside the taxing authority, i.e., they are included in the denominator, but not in the numerator of the apportionment formula.

Travel days not including a game, practice, team meeting, promotional caravan or other similar team event shall not be considered duty days spent within the taxing authority, but they shall be included in the total duty days spent both within and outside the taxing authority.

Bonuses: Performance bonuses earned as a result of play during the season, such as a bonus received for championship, playoff, or all-star games are included in the apportionment formula. Bonuses paid for signing a contract are included in the apportionment formula unless:

- (a) Payment is not conditioned on playing any games, performing subsequent services, or making the team;
- (b) The bonus is payable separately from the salary or other compensation; and
- (c) The bonus is nonrefundable.

## **ARTICLE VI APPENDICES**

### **Section 601. Earned Income / Compensation.**

#### **Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2) 72 P.S. § 7303**

(a)(1) Compensation. All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered whether directly or through an agent and whether in cash or in property except income derived from the United States Government for active duty outside the Commonwealth of Pennsylvania as a member of its armed force.

#### **61 Pa. Code Pt. I Subpt. B Art. V 61 Pa. Code § 103.11. Compensation.**

Reference should be made to § 101.6 (relating to compensation).

#### **61 Pa. Code Pt. I Subpt. B Art. V 61 Pa. Code § 101.6. Compensation.**

(a) Compensation includes items of remuneration received, directly or through an agent, in cash or in property, based on payroll periods or piecework, for services rendered as an employee or casual employee, agent or officer of an individual, partnership, business or nonprofit corporation, or government agency. These items include salaries, wages, commissions, bonuses, stock options, incentive payments, fees, tips, dismissal, termination or severance payments, early retirement incentive payments and other additional compensation contingent upon retirement, including payments in excess of the scheduled or customary salaries provided for those who are not terminating service, rewards, vacation and holiday pay, paid leaves of absence, payments for unused vacation or sick leave, tax assumed by the employer, or casual employer signing bonuses, amounts received under employee benefit plans and deferred compensation arrangements, and other remuneration received for services rendered.

(b) Scholarships, stipends, grants and fellowships shall be taxable as compensation, if services are rendered in connection therewith.

- (1) For taxable compensation, the following words have the following meanings, unless the context clearly indicated otherwise:
  - (i) Fellowship stipend or fellowship award – A fixed sum of money paid periodically for services or to defray expenses to a graduate student who is enrolled in a graduate degree program at a university.
  - (ii) Grant-in-aid – Financial support given by a public agency or private institution to an individual to further the individual's education.
  - (iii) Postdoctoral research fellowship stipend or postdoctoral research fellowship award – A fixed sum of money paid periodically for services or to defray expenses of an individual who has obtained a doctoral degree at a university and is conducting research at a research facility.

(iv) Scholarship – A grant-in-aid to a student.

- (2) Scholarships, grants, awards and other types of student aid which require no past, present or future services in return for receipt of the funds are not taxable.]

Examples:

- (i) John has a high school diploma and is currently employed. John's employer promises to pay for John's college tuition, room and board for 4 years and John agrees to return to his employer after obtaining his degree and to work for the employer for 4 consecutive years. John's grant-in-aid is taxable compensation and is subject to employer withholding and reporting.
- (ii) Peter is employed by ABC Company. Peter and ABC Company agree that he will work for them for 1 year without receiving any salary. In return, after that year Peter will attend XYZ College and ABC Company will pay his tuition, room and board for the entire year. ABC's payment of Peter's tuition, room and board is taxable compensation and is subject to employer withholding and reporting.
- (iii) John is employed by XYZ Corporation. XYZ Corporation has established a "Scholarship Program" for the children of its employees. The program does not qualify as an employer scholarship program for Federal income tax purposes. John's child, Erin, received a "scholarship" from the plan to attend college. The fair market value of the Federally nonqualified scholarship is taxable compensation to John and is subject to employer withholding.

- (3) Fellowship awards or fellowship stipends made to graduate students enrolled in a graduate degree program at a university chartered by a state or foreign country on the basis of need or academic achievement for the purpose of encouraging or allowing the recipient to further their educational development are not taxable. When the fellowship awards or fellowship stipends are made as compensation for past or present employment or in expectation of future employment services they are taxable.

Example:

Jane is enrolled in a graduate degree program in biochemistry at a university. Jane is in the first year of a 3-year graduate degree program. A pharmaceutical company enters into an agreement to pay the remaining tuition, room and board expenses necessary for Jane to obtain her graduate degree. In return, Jane promises to work for the pharmaceutical company for 4 years after graduation. Jane's receipt of these payments from her future employer constitute taxable compensation.

- (4) Fellowship awards and fellowship stipends are taxable compensation for services if the recipient is required to apply his or her skill and training to advance research, creative work, or some other project or activity, unless the recipient can

show that the recipient is a candidate for a degree and the same activities are required of all candidates for that degree as a condition to receive that degree.

Example:

Steven is enrolled in a graduate degree program in education at ABC University. Degree candidates are required to teach an undergraduate education course for 5 hours a week to obtain their degree. Steven and two of the other 15 candidates in the degree program are receiving federal stipends. If Steven does not perform additional services for ABC University, his teaching will not make his stipend taxable compensation.

- (5) For a payment received by a postdoctoral research fellow for conducting research to be excludable from the definition of compensation, the payment shall meet the following conditions. If the payment fails to meet one or more of these (15) conditions, the payment is taxable compensation:
- (i) The source of funding for the payment is a governmental agency, a private foundation as described in section 509 of the Internal Revenue Code (26 U.S.C.A. § 509) a Federally exempt organization as described in sections 501(c)(3) or (5) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3) and (5)), or a public or private university chartered by a state.
  - (ii) The organization which is permitting the fellow to use its facilities and which is sponsoring the fellow's research (sponsoring organization) is a governmental agency, a Federally exempt organization as described in section 501(c)(3) of the Internal Revenue Code, or a public or private university chartered by a state.
  - (iii) Prior to enrollment in the sponsoring organization's postdoctoral research fellowship program, the fellow has obtained a doctoral degree in a field of study which is related to the field of study being researched by the fellow.
  - (iv) The amount of the fellow's stipend or grant is based on the scale established by the source of funding.
  - (v) Each fellow formulates his or her own research project or advances his or her own research project throughout the stipend or grant period.
  - (vi) The sponsoring agency serves only in an advisory capacity in the selection of research projects and cannot establish or control the fellow's hours or methods of research except as control relates to legal or regulatory matters.
  - (vii) The fellow is not required to perform administrative work, teaching assignments or other duties for the sponsoring organization or another entity as a condition for receiving a payment and will not be penalized for not performing these duties.

- (viii) The fellow is not required to enter a contractual commitment for future employment with a specified entity as a condition for obtaining or continuing to obtain the payments.
- (ix) Payments to the fellow for conducting research are limited to no more than 36 months.
- (x) Research results or writings made by the fellow during the program do not become the property of the sponsoring organization or another entity other than the fellow. Patent or copyright royalties or other income derived directly or indirectly from the fellow's research results or writings may become the property of the sponsoring organization. Income or gain derived from patent or copyright royalties by the postdoctoral research fellow is taxable income to the fellow.
- (xi) The fellow is not required to assist employees of the sponsoring organization in conducting research being performed by employees of the sponsoring organization.

Example:

John is a postdoctoral research fellow at ABC Cancer Research Institute. His research is being funded by the National Institute of Health. The sponsoring organization, ABC Cancer Research Institute, requires John to spend half of his time assisting its own employees on their own research project as a condition for sponsoring his research. John's postdoctoral research fellowship stipend is taxable compensation.

- (xii) The fellow does not receive fringe benefits to which an employee of the sponsoring organization is entitled, except to the extent that the benefits are at no additional cost to the sponsoring organization. For purposes of the subparagraph 'fringe benefits' means payer provided health, life, disability income or group legal services insurance plans, payer provided automobile and payer provided dependent care assistance, educational assistance plans or retirement benefits.
  - (xiii) Pennsylvania unemployment compensation premiums are not required to be paid by the sponsoring organization or another entity on behalf of the fellow.
  - (xiv) Federal social security employment tax is not required to be paid by the sponsoring organization or another entity or the fellow with respect to the fellowship.
  - (xv) The fellow is not under the coverage of the sponsoring organization's worker's compensation insurance plan or policy.
- (6) Fellowship stipends paid to medical interns and residents under an internship or residency program which conforms or substantially conforms to standards set by the American Medical Association are taxable compensation. If the program

does not conform to the referenced standards, the amount received will be taxable as wages.

(c) Compensation does not mean or include any of the following:

- (1) Periodic payments for periods of sickness or disability paid by or on behalf of an employer under a program or plan unless the payments are regular wages. Additionally, no amount of damages received (whether by suit or agreement and whether as lump sums or as periodic payments) if pain and suffering, emotional distress or other like non-economic element was, or would have been, a significant evidentiary factor in determining the amount of the taxpayer's damage. No payments made by third-party insurers for periods of sickness or disability would be considered payments of regular wages. A program or plan where any of the following occur would not be considered payment of regular wages.
  - (i) The periodic payments have no direct relationship to the employee's usual rate of compensation.
  - (ii) The periodic payments are computed with reference to the nature of the sickness or disability and without regard to the employee's job classification.
  - (iii) Periodic payments would be reduced by payments arising under Workmen's Compensation Acts, Occupational Disease Acts, Social Security Disability or similar legislation by any government.
  - (iv) The periodic payments exceed the employee's usual compensation for the period.
- (2) Disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts or similar legislation by any government.
- (3) Federal old age insurance benefits payable under 42 U.S.C.A. § 401, Railroad Retirement Act benefits payable under 45 U.S.C.A. § 228 or § 231 or any retired or retiree pay of a member or former member of a uniformed service computed under 10 U.S.C.A. § 1401.
- (4) Payments commonly known as public assistance or unemployment compensation by a government agency.
- (5) Payments made by employers to employees to reimburse actual expenses allowable as an ordinary, reasonable and necessary business expense.
- (6) Payments made by an employer or labor union or elective contributions deemed to be made by an employer under a cafeteria plan for a nondiscriminatory health, accident or death plan.



Example:

P is a partnership that is engaged in providing accounting services. On a nondiscriminatory basis, it offers the following fringe benefits to both employees and partners of the firm:

Blue Shield medical coverage.

Dental and eyeglass coverage with a deductible.

Group term life insurance with coverage up to the equivalent of the employee's annual salary.

P pays the premiums on behalf of all employees and partners for all medical dental, eyeglass and insurance coverage directly to the insurance carrier or benefit provider. P does not add the premium costs for the benefits to any employee's gross wages and it accounts for the benefit costs as non-salary fringe benefit expenses. In other words, the value of the benefits are not shown as an addition to any employee's wages on the paystubs furnished to employees.

The plan is not a Federally qualifying cafeteria plan.

Conclusion: For the employees of P the employer-provided hospitalization (Blue Shield), eyeglass, dental coverage and group life insurance benefits are excludable from compensation and are therefore not subject to withholding. The premiums paid on behalf of the partners, however, are not deductible or excludable from the income of the partnership or the partners.

- (7) The value of meals and lodging furnished for the convenience of an employer or casual employer does not constitute compensation
- (8) Old Age or Retirement Benefit Plans.
  - (i) Scope. For the purpose of this section, the term plan includes Individual Retirement plans (IRA), Simplified Employee Pension Plans (SEP), Keogh plans, Federally qualified employee pension plans and similar old age or retirement benefit plans.
  - (ii) Contributions.
    - (A) Contributions to a plan made by employers or labor unions on behalf of an employee are excludable from the employee's income, except as otherwise provided in these Rules and Regulations.
    - (B) Contributions to a plan made by an employee or other individual directly or indirectly, whether through payroll deduction, a salary reduction agreement or otherwise, are not excludable from his or her income. Contributions by, on behalf of or attributable to a self-employed person are not excludable from either

compensation or net profits from a business, profession or other activity.

(iii) Distributions.

- (A) Amounts distributed to an individual from a plan shall be included in income to the extent that contributions were not previously included in this income except for either of the following:
  - (I) Distributions made upon or after his or her retirement from service after reaching a specific age or after a stated period of employment.
  - (II) Distributions transferred into another plan, where the transferred amounts are not included in income for Federal income tax purposes.
- (B) To determine the portion of a distribution to be included in income, an individual shall use the cost recovery method.

Example 1:

John contributed \$1,000 to his IRA. He pays tax on the \$1,000 contribution. Three years later the account has earned \$750 in income. The total balance of the account at that time is  $(\$1,000 + \$750 =) \$1,750$ . John receives a distribution of \$750 from his IRA. Since the amount of the distribution does not exceed \$1,000, the distribution is not includable in income.

Example 2:

Same facts as Example 1, except that John receives a distribution of \$1,500. Since the amount of the distribution exceeds \$1,000, the excess of the distribution, \$500, is includable in his income, as compensation.

- (iv) Income on plan assets. Income on assets held in a plan is not includable in income.
- (9) Payments made by an employer or labor union for a nondiscriminatory supplemental unemployment benefit or strike benefit plan.
- (10) Federally excludable benefits provided for the convenience of the employer.
- (11) Fringe benefits described in "Taxable Compensation" section (relating to fringe benefits in the form of personal use of property or services).
- (12) Program benefits payable on condition of hospitalization, sickness, disability or death under a health, accident or death plan.

- (13) Guaranteed payments to a partner for services rendered to the partnership.
- (14) Benefits payable by an employer or labor union under a supplemental unemployment benefit plan, whether payable on a periodic basis or in the form of cash, services or property.

(d) The Department [and this bureau] may require the submission of a statement from an employer or casual employer with respect to its employees or casual employees regarding the verification or substantiation of unreimbursed and reimbursed business expenses. The statement of the employer or casual employer should verify that the expenses were required by the employer or casual employer. The statement shall set forth the types of expenses such as travel, meals, hotel and so forth that the employer or casual employer specifically requires the employee or casual employee to incur and to what extent, if any, the expenses are reimbursed. If the employer or casual employer requires the employee or casual employee to maintain an office, or office-in-home, a statement by the employer or casual employer to this effect should also be included. The Department will not require the employer or casual employer to specifically list the amount expended or to verify each expense incurred by the employee or casual employee.

(e) Compensation paid in a medium other than cash shall be valued at its current market value. Compensation paid in the form of employer-provided coverage under an employee welfare benefit plan shall be valued at cost. The cost shall be the total amount of payment made during the year by the employer on account of the plan and plan participant, except in the following situations:

- (1) In the case of self-insured insurance plans, the cost shall be the annual cost for financial accounting purposes.
- (2) The amount of compensation paid in the form of Federally taxable noncash fringe benefits shall be determined in the same manner as is prescribed by the Internal Revenue Service under Federal statutes and regulations.
- (3) In the case of cafeteria plans, amounts specified in the plan document as being available to the participant for the purpose of selecting or purchasing benefits when so used, shall be included in the total amount of payment made during the year by the employer on account of the plan and plan participant.

(f) Compensation in the form of incentive, qualified, restricted or nonqualified stock options shall be considered to be received:

- (1) When the option is exercised if the stock subject to the option is free from any restrictions having a significant effect on its market value.
- (2) When the restrictions lapse if the stock subject to the option is subject to restrictions having a significant effect on its market value.
- (3) When exchanged, sold or otherwise converted into cash or other property.

(g) The following rules apply if, under a cafeteria plan, plan participants may choose between benefits consisting of cash, additional paid vacation days, and other benefits; or if, outside a cafeteria plan, plan participants can purchase additional paid vacation days:

- (1) If additional paid vacation days are elected or purchased and they are used before the next calendar year, the following apply:
  - (i) The amount of cash foregone in exchange for the paid vacation day is excluded from income.
  - (ii) The vacation pay is includable in income when paid.
- (2) If additional paid vacation days are purchased outside a cafeteria plan and they are not used before the next calendar year, the amount of cash foregone in exchange for the paid vacation days is excludable for Act 166 of 2002 Income Tax purposes only if both of the following apply:
  - (i) The value of the vacation day cannot be cashed out or used for any other purpose.
  - (ii) The vacation day cannot be carried over to the next taxable year.

(h) Employer payments to reimburse employees for uninsured medical or dental expenses are not taxable if the amounts available for covered reimbursement cannot be cashed out or used for any other purpose during the taxable year or be carried over to any other taxable year, normal cash compensation that is forgone by an employee under a spending account or otherwise, and credited to a self-insured medical reimbursement account and drawn upon to reimburse the employee for uninsured medical or dental expenses to which section 105(b) of the IRC (26 U.S.C.A. § 105(b)) applies is excludable from tax.

- (i) After December 31, 1996:
  - (1) Payments made for employee welfare benefit plans under a cafeteria plan will be deemed to be an “employer contribution” for Act 166 of 2002 Income Tax purposes if the following apply:
    - (i) The payments were not actually or constructively received, after taking section 125 of the IRC (26 U.S.C.A. § 125) into account.
    - (ii) The payments were specified in a written cafeteria plan document as being available to the participant:
      - (A) For the purpose of selecting or purchasing benefits under a plan.
      - (B) As additional cash remuneration received in lieu of coverage under a plan.
    - (iii) The benefits selected or purchased are nontaxable under the IRC when offered under a cafeteria plan.
    - (iv) The payments made for the plan would be nontaxable under the Act 166 of 2002 Income Tax if made by the employer outside a cafeteria plan.
  - (2) If the requirements of paragraph (1) are satisfied, cafeteria plan contributions are taxed under such rules as they apply to employer payments for employee welfare benefit plans. However, if the benefits are taxable for Federal Income Tax

purposes when offered under a cafeteria plan, the payments will also constitute compensation for Pennsylvania Personal Income tax purposes. Payments will also constitute compensation if they would be taxable under the Pennsylvania Personal Income Tax if made by the employer outside a cafeteria plan. For example, although not taxable under the IRC, coverage under a dependent care plan providing for the reimbursement of expenses for household or dependent care services would constitute compensation under the Pennsylvania Personal Income Tax because it would be taxable if made by an employer outside a cafeteria plan.

(j) Compensation includes the entire cost of employer-provided coverage provided to a highly compensated participant under any discriminatory employee welfare benefit plan.

(k) Contributions made by an employer for IRC 401(k) plans under a cafeteria plan under which the employee unilaterally may elect to have the employer either make the payments as contributions to a 401(k) plan or other plan on behalf of the employee or to the employee directly in cash are includable in the employee's compensation.

(l) Compensation is taxable regardless of the form of the payment. Examples of taxable forms of payment include:

- (1) Cash.
- (2) Foreign currency.
- (3) A check or other negotiable instrument.
- (4) Freely transferable, readily marketable obligations or other cash equivalent.
- (5) Tangible property interests, intangible personal property or other rights, claims or things that either:
  - (i) Can be enforced in courts of equity and transferred and have an ascertainable fair market value.
  - (ii) Can be reduced to cash or eliminate an expenditure.
- (6) A monetary payment in reimbursement of a personal expenditure or to eliminate personal expenditure.
- (7) Below- market rate loans.
- (8) A cancellation of indebtedness constituting a quid pro quo or incentive that would be taxable had the amount by which the debt had been forgiven or discharged instead been paid to the debtor in cash or property.

(m) For purposes of this section:

- (1) A person who separated from service before satisfying superannuation requirements shall be deemed to be retired from service upon reaching retirement

age, regardless of whether he has permanently and wholly withdrawn from active working life or not.

- (2) The voluntary discontinuance of a plan within 3 years after it has taken effect, for any reason other than business necessity, will be evidence that the plan was temporary and limited.

## **Section 602. Net Profits.**

### **Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2) 72 P.S. § 7303**

(a)(2) Net Profits. The net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

#### **61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax).**

#### **61 Pa. Code § 103.12**

(a) Net profits shall be the net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof. They shall be determined either on a cash or accrual basis in accordance with accepted accounting principles and practices.

(b) To constitute net profits, all of the following must apply:

(1) The gross profits shall be derived from one of the following:

- (i) The marketing of a product or service to customers on a commercial basis or from securities employed as working capital in the business operations.
- (ii) Accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations.
- (iii) Assets which serve an operational function in the ordinary course of business operations.

(2) The marketing activity shall be conducted with the manifest objective of achieving profitable operations.

(3) The marketing activity shall be conducted with regularity and continuity and may not be limited or exclusive.

(c) In computing net profits, a deduction will not be allowed for any item of cost, expense or liability derived or incurred in connection with, or attributable to any of the following:

- (1) The ownership or disposition of assets that are held for investment purposes or otherwise serve an investment function.

- (2) The trading in securities for personal purposes and not for the accounts of customers.
- (3) The sale, discontinuation or abandonment of a business or segment thereof.
- (4) Any tax imposed on, or measured by, gross or net earned or unearned income, mercantile or business privilege taxes..
- (5) An isolated or nonrecurring transaction which is not a normal or routine business activity.

(d) Choosing to form a partnership or other entity or to associate with others, receiving and reporting income or gain as the income of the partnership, entity, or associates or dividing the same among its partners, beneficial owners or associates or the trading in securities for the benefit of shareholders, partners, members or associates does not of itself make the income of the partnership, entity or associates net profits.

(e) For purposes of this section, only the following participants in the stock, securities, options, derivatives, futures or commodities market are engaged in marketing of a product or service to customers:

- (1) Those who maintain or provide a market place or facilities for bringing together purchasers and sellers of these financial investment products.
- (2) Those who are licensed to act as their customer's agents and charge a negotiated commission for executing transactions and do not take title to the particular positions they buy or sell.
- (3) Those who devote managerial attention to the financial investment products holdings of others, or who employ other persons to assist them in that management, in the capacity of a licensed investment advisor.
- (4) Licensed dealers, including financial investment product specialists and market makers, if the conditions in subparagraphs (i) – (iv) are met:
  - (i) The dealer maintains an inventory of financial investment products with the objective of reselling his inventories at a profit to customers or operates as a specialist or market maker.
  - (ii) The dealer makes market by quoting the bid and asked prices at which he is willing to buy and sell the financial investment products and by buying directly from or selling directly to customers.
  - (iii) The dealer's profit is determined in whole or in part by a markup based on cost.
  - (iv) The dealer elects to inventory securities held for resale to customers or uses the mark-to-market system of accounting.

- (5) Underwriters who facilitate initial sales of financial investment products by acting either as licensed dealers in a principal capacity or as brokers in an agency capacity.

(f) When a person operates as an investor or trader with respect to a portion of that person's activities and as a market establishment, broker, investment counselor or dealer with respect to the rest, this section applies only to the operations as a market establishment, broker, investment counselor or dealer.